

KABI700016042019



IN THE COURT OF THE CIVIL JUDGE AND JMFC,
SIRUGUPPA

Dated this the 11th day of August 2023

Present:

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

O.S. No.221/2022

Plaintiffs: **Sri. Malleshi and others**

V/s

Defendants: **Sri.Bicchugatti Somayya and others**

Parties to I.A.No.I

Applicants: 1.H.Malleshi S/o late H.Hanumaiah
Plaintiffs: Aged about 38 years,
Agriculturist,
2. H.Erappa S/o late H.Hanumaiah,
Aged about 35 years,
Both are R/o Sirigeri Village,
Siruguppa Tq, Ballari District.

(By Sri. D.N.J. -Advocate)

V/s

Opponents: 1.Sri.Bichugatti Somaiah
Defendants: S/o late B.Veera Naik,
Aged about 60 years,
2.B.Gangamma W/o B.Somaiah,
Aged about 56 years,

3. B.Dodda Basava S/o B.Somaiah,
Aged about 36 years,

4. Sanna Basava S/o B.Somaiah,
Aged about 33 years,

5. B.Veereshi S/o B.Somaiah,
Aged about 27 years,

All are R/o Sirigeri Village,
Siruguppa Tq, Ballari District.

(**By Sri.M.B.R.** - Adv. for defendants)

ORDER ON I.A. No.I

The counsel for plaintiffs filed IA No.I U/O XXXIX Rule 1 R/w. Sec.151 of CPC to restrain the defendants from interfering their possession over the suit schedule property.

2. The said application is accompanied with an affidavit of plaintiff No.1 wherein he contended that they are the absolute owners of suit property. In order to show their possessory title they have produced the agreement executed by the defendant No1 dated 18/02/2006. They are in possession over suit property. The defendant No.1 not only confirmed bu also put them and their father in possession of the suit property since their father and they themselves were in possession over suit

property. The defendants are no way concerned to the suit property. They have no iota or right, title and interest over suit property by virtue of agreement executed by defendant No.1 dated 18/06/2006. They are having prima facie case and balance of convenience lies in their favor and if the application is not allowed they will be put to great loss and hardship. On these grounds the plaintiffs prayed to allow the application.

3. On the contrary after issuance of summons the defendants have appeared through their counsel. Amongst them the defendant No.1 had filed written statement which has been adopted by the other defendants by way of filing of adoptive memo.

4. In the written statement the defendants have denied the contentions taken by the plaintiffs in their plaint. Further it is contended that the plaintiffs have filed present suit by suppressing the true facts. It is their contention that the suit schedule property is an ancestral property of defendant No.1 who has acquired it by way of partition. Therefore, the

defendant No.1 executed nominal sale-deed in favour of his wife i.e., defendant No.2 on 18.05.2009 in respect of suit property. The suit property compares both house and open space which is totally measuring East-West 40 feet and North-South 30 feet. Out of said measurement, the house property bearing door No.327 measuring East-West 22 feet and North-South 19 ½ feet and the house is facing towards Northern side. Further the open space is retained by the defendants which measures East-West 18 feet and North-South 10½ feet. Further it is stated that the defendants are rustic villagers and the measurement shown in the sale-deed dated 18.05.2009 executed by defendant No.1 in favour of defendant No.2 contains measurement as 10 x 10 feet. But the said mistake is bonafide one as the actual measurement is 22 x 10 ½ feet. Since, the katha has not been changed in the name of defendant No.2, hence, still it is standing in the name of defendant No.1.

5. It is their contention that towards Eastern-side of their open space, an open space and the house of plaintiffs is

situated, the plaintiffs taking undue advantage of adjacent property of defendants, they are making hectic efforts to put up construction over open space belonging to defendants. The plaintiffs are not having any right over suit schedule open space measuring 18 x 10 feet which is retained by the defendants. The plaintiffs on 31.07.2009 tried to lay foundation over suit property without obtaining license from the Gram Panchayat. Therefore, the defendant had filed suit OS No.97/2009 before this court which came to be dismissed on 23.05.2012. Later the defendant No.1 preferred Appeal in RA No.43/2012 which was came to be allowed on 21.12.2013. Aggrieved by the said order the plaintiffs have preferred RSA No.100166/2014 before Hon'ble High Court of Karnataka, Dharwad Bench, Dharwad which has came to be dismissed on 25.01.2022. Aggrieved by the said order the plaintiffs have approached Hon'ble Apex Court by way of Special Leave Appeal No.19107/2022 which is also came to be dismissed. Therefore, the defendants are in possession over suit property and the plaintiffs are not having any right over it. On these

grounds the defendant prayed to dismiss the application.

5. Heard arguments and perused the materials available on record.

6. The following points arose for my consideration.

1. *Whether the prima facie case lies in favour of plaintiffs?*
2. *Whether balance of convenience lies in favor of plaintiffs?*
3. *Whether any irreparable injury or hardship which cannot be compensated in terms of money would be caused to the plaintiffs in the event of refusal of temporary injunction sought?*
4. *What order?*

7. My findings on the above points are as follows:

Point Nos. 1 to 3: In the **Negative**.

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

REASONS

8. **POINT No. 1:** This is a simple suit for injunction to restrain the defendants from disturbing the possession of

plaintiffs over suit property. It is the contention of plaintiffs that they are the absolute owners of suit property and the defendant No.1 and others have executed agreement dated 18.02.2006, thereby delivered the possession of property in favour of plaintiffs. Along with suit the plaintiffs have produced the certified copy of said agreement alleged to be executed by the defendant No.1. On going through the contents of alleged agreement it has been mentioned that it was executed by the defendant No.1 in favour of father of plaintiffs and plaintiff No.1 with respect to suit schedule property. Further it is the contention of plaintiffs that, the defendant No.1 has handed over the possession of property as on the date of alleged agreement. Till today the plaintiffs have not produced the original agreement which was alleged to be executed by defendant No.1. However, the present suit is for bare injunctions in which the heavy burden lies upon plaintiffs to establish their possession over suit schedule property either their possession is lawful or unlawful. Therefore, the plaintiffs have to establish that they are having

possession over suit schedule property, for which the full fledged trial is necessary. However, on the other hand it is the contention of defendant that the dispute with regard to suit schedule property is already decided by the Court of law. Therefore, there is no necessity of present suit and the suit is not maintainable. However on perusal of copies of Order passed in OS No.97/2009, RA No.43/2012, RSA No.100166/2014 and Special Leave Appeal No. 19107/2022, it is noted that the same were filed with respect to defendants property i.e., Door No.327 measuring 22 x 19.½ feet but the present suit is filed with respect to Sy.No.635 totally measuring 60 feet in length. Nowhere in the defendants stated that the suit property mentioned in above suit OS No. 97/2009 is part and parcel of present suit property. Therefore, the defendants are yet to establish that the suit property of OS No.97/2009 is part and parcel of present suit property. Therefore, as contented above the plaintiffs, at this stage have not produced any records to show that they are having possession over suit property.

9. At this stage this court relied upon decision reported in **1996 SCC online Kar 208 - Dr.Ganapathi Narayan Sabhahit & others V/s Shivaram Narayan Bhat & others.**

Wherein the Hon'ble High Court of Karnataka at para 24 held that *"The purpose of interlocutory order as mentioned earlier is to maintain states-quo as it existed on the date of the suit and not to grant the final and complete relief or relief of the final nature as claimed in the suit as it is beyond the purview and scope of jurisdiction of granting interlocutory relief"*.

10. Basing on the principles of said decision the case on hand is filed for the relief of injunction where the final relief as well as relief sought under IA are one and same. Therefore, in view of absence of sufficient materials, this Court is unable to grant remedy in favour of Plaintiffs. Hence, at this stage this Court is of opinion that the Plaintiffs have failed to establish prima-facie case. Hence, I answer **Point No.1** in the **Negative**.

11. POINT No. 2: The existence of prima facie case in this matter of granting injunction is really harbinger to investigate

other points as per principal cited in the decision of **Gourishankar Swamigalu has reported in ILR 1989 Karnataka 1701** and it has been further held that if there is no prima facie case at all or the case put forward is so weak and tainted having very little prospect of being accepted by the Court, further questions of balance of convenience and irreparable loss need not be considered since the Plaintiffs would fall at the very first stage itself. The relief of injunction is remedy in equity. Hence, such relief must be bestowed only on whose reputation and hands are both spotlessly clean. In the light of discussion made above, I am of the opinion that balance of convenience does not lies in favor of Plaintiffs. Hence, my answer to the **Point No.2** is in the **Negative**.

12. POINT No. 3: If any temporary injunction is granted the Plaintiffs should be put into irreparable injury or hardship which cannot be compensated in terms of money. In this case the it is clear that the suit property is open site which is kept open since several years and no party to the suit is intended to construct any structure over suit property. If at this stage

injunction is ordered then it may cause hurdle to the defendants as plaintiffs may put the structure over suit property. Further, at this stage there are no materials available to hold that neither the Plaintiffs are in possession nor the defendant is in possession over suit schedule property. Therefore, if the I. A. is not allowed then no loss or any hardship which could not be compensated in terms of money would cause to the Plaintiffs. Hence, my answer to the **Point No.3** is in the **Negative**.

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

ORDER

**The IA No.I filed by the Plaintiffs U/O XXXIX
Rule 1 R/w Sec. 151 of CPC is hereby dismissed.
No order as to costs.**

(Dictated to the Steno, after transcribed, computerized by him, corrected, signed and then pronounced by me in the open Court, on this 11th day of August, 2023)

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