

IN THE COURT OF THE PRL.CIVIL JUDGE & JMFC MUDHOL

AT: MUDHOL

Before Smt.Shainey K.M
B.A.L, LLB
Prl.Civil Judge & JMFC Mudhol

ON TODAY THIS 6TH DAY OF August- 2016

FDP No: 3/1998

1. Wallisab S/o Saidusab Naiwadi Plaintiff
And another.

V/s

1. Smt. Jaitunbi S/o Dastagirsahab Buddebar
And others.

....Defendant

I.A No-32

1. Venkappa S/o Sangappa Garasangi
Age: 61 years Occ: Agriculture
R/o Mudhol, Tq: Mudhol, Dist: Bagalkot

... Applicant/Defendant NO-4

V/s

1. Wallisaheb S/o Saidusaheb Naikawadi
Since deceased by his L.Rs.

- 1A. Smt. Allinabi @ Aminabi W/o Hasansaheb Attar
Age: Major, Occ: Household,
R/o Mudhol, Tq: Mudhol
Dist: Bagalkot and others.

.....Opponent/plaintiff

ORDER ON I.A No-32

4th defendant has filed this interim application u/s 51 of T.P. Act 1882 contending that, he and his brother Dundesh Garasangi has purchased 10 acres 12 guntas of land in survey No: 387/1 of Mantur village from Satish Malagan and Shivalingappa Malagan and registered sale deed

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dated 22.07.1992 and after the said purchase, a family partition was effected on 25.07.2000 amongst their family members, in the said partition entire area in survey No: 387/1 was allotted to the share of 4th defendant and he is in exclusive possession and enjoyment of the said land for all these year. It is contended that, previously the said land was in the joint names of deceased Saidusab Naikwadi, Akbar Naikwadi, Ramijabi Naikwadi and they sold it to Satish Malagan and Shivalingappa Malagan on 13.12.1988. From said Satish Malaghan and Shivalingappa Malagan the defendant NO-4 and his brother Dundesh have purchased the said land. It is averred that, 4th defendant and his brother have made lot of improvement in the suit land. It is further averred that, the suit land was saline and alkaline land due to the passing of canal water and had thus become useless for cultivation, out of the total extent around 1 acre land was a Kharab land and 3 acre was full of Bellary Jaly tree and entire land was infected with Hariyali Grass. Added to this the land itself was on a lower plain than the other adjoining lands through which canal passes and made the entire land saline and alkaline.

2. *It is contended in the accompanied affidavit that, 4th defendant has removed all the shrubs, including Bellary Jali tree and Hariyali grass at the initial stage by employing earth movers and using manual labour. Later in order to weed out salinity and alkalinity they purchased huge quantity of loan by purchasing it from outsider. This entire excise took 6 to 8 years for the defendant to make the land a cultivable one. Further contended that, 4th*

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defendant could not utilize the canal water for the fullest extent, it was almost impossible for him to get the land irrigated through the natural course of the canal due to the imparement in the levels of the land and the canal. Therefore, he compelled to drill around 8 borewells in the suit land as he could not get sufficient water to irrigate the entire land only with the help of 3-4 borewells.

3.4th defendant has dig trenches along the boundaries of his entire land constructing sturdy and strong bunds with murrum and stones, subsequently he laid out a network of pipeline through out his land for easy flow of the water, then the land become irrigated land, so it was quite necessary to construct a farm house in the said land and accordingly he had constructed a farm house. Further he took permission from the KEB to install transformer to get supply of electricity and to fix poles across his land. He constructed small bridges across the canal to connect the different pieces of his land. After making all above mentioned improvements, totally converting an almost fallow land into a well maintained irrigated land, this defendant planted 39 coconut trees and other trees yielding horticulture crops, now all such trees are fruit bearing and yielding trees. It is further contended that, in this entire process this defendant could hold and improve the land only due to his will power by investing huge funds both from his family and borrowing loan from various financial institutions and also from private persons like friends. Later he consulted one Sri.Shivayogi S/o Revenashiddappa Byakod of Belagali village who is an agricultural graduate and running an agriculture consultancy viz, Sneha Krishi. Said S.R.Byakod has visited

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the aforesaid land and took stock of all the field details and prepared a report containing the estimate of the costs as on today. The detail of all the cost of improvement effected by this defendant have been explicated in the annexed statement. It is contended in the application that, he incurred an expenditure of more than rupees two crores so far towards the cost of improvement as on today. Therefore he prays to pass an order directing the plaintiff to either to have the value of the improvement paid and secured to this defendant, in the alternative to direct the plaintiff to sell her interest in the said land in favour of this defendant at the then market value thereof irrespective of the value of such improvement and by considering the value involved in the aforementioned sale deeds. With these averments he prays to allow the petition.

4. Learned counsel for the plaintiff has filed objection to above application denying the entire averment made in the application contending that, the application is misconceived, not tenable in law. Plaintiff contended that, 4th defendant has suppressed the true and material facts before the court and therefore he is not entitled to any amount from this plaintiff. It is averred that, father of the plaintiff has filed O.S NO: 18/1970 against his brother and sister in the court of Munsiff Mudhol in respect of survey No: 387 measuring 19 acres which was later on subdivided as 387/1 and 387/2. One Basappa Katageri respondent NO-3 has illegally purchased 9 acres out of land survey 387 on 24.05.1973 from Imamsab Naikwadi. Further contended that, defendant NO-3A, 3B, 3B1 have illegally sold the remaining portion measuring 10 acre 12 guntas to Satish Shivalingappa Malaghan on 13.12.1988. The 4th

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defendant and his brother have purchased said lands from Satish Malaghan and Shivalingappa Malaghan under 2 registered sale deed dated 22.07.1992. The aforesaid sale transactions was took place during the pendency of the matter before the court and therefore application filed by the 4th defendant is hit by doctrine of lis-pendency.

5.It is the specific contention of the plaintiff that, 4th defendant is not a bonafide purchaser, the court had already rejected his contention on the ground that, the sale is hit by doctrine of lis-pendency and Hon'ble High court of Karnataka has rejected his plea. Plaintiff specially contended that, 4th defendant being a aliene's aliene has no right to claim equity and as per the finding of the Hon'ble high court of Karnataka he claim equity if his case falls within 4 corners of Section 51 of the T.P.Act 1982. It is the specific case of the plaintiff that, to claim benefit U/s 51 of said Act, the person making the improvements must have been evicted from suit property, but 4th defendant is in possession of the suit property said to have been purchased by him. The Government has constructed Ghataprabha left bank canal about 50 years back, said canal passes through the land R.S NO: 387, thus there is a perennial source of water for the suit land and question of 4th defendant making it irrigated land does not arise.

It is further contended that, suit land is a fertile land, it has got irrigation facility for the last 45 to 50 yeas, 4th defendant has not effected any improvement as alleged by him, the assessment produced by him is not correct, he prepared it to make fortune out of nothing, he enjoyed the suit property for all these years, he has to pay mesne profit to the plaintiff, to avoid payment of said mesne profit 4th

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defendant has set up a false case of improvement , sought money from the plaintiff. With these averment he prays to dismiss the application.

6.On the basis of pleadings of both parties the court has framed following issues.

ISSUES

1.Whether in facts and circumstances of the case the defendant NO-4 is entitled for the benefit of Section 51 of Transfer of property Act ?

2.What order ?

7.In support of his case 4th defendant has examined himself as D.W-4, he examined witnesses Shivayogi Byakod, Sidramappa Sidagond, Ashok Metagudda, Govinda Naik as D.W-5 to 8. Exhibits are marked as Ex.D-14 to 21. Learned counsel for the petitioner has cross examined D.W-5 to 8. Petitioner -1(A) Allanabi examined herself as P.W-1 and she has not produced any documents on I.A NO-32. Learned counsel for the respondent has cross examined P.W-1.

8.Heard arguments of the learned counsel for the petitioner and defendant NO-4, perused the oral and documentary evidence placed on record. My answers to the above issue are as follows;

Issue NO-1 : - In the Negative

Issue NO -2 : As per final order for the following

REASONS

9.**Issue NO-1** :- 4th defendant has filed I.A No-32 U/s 51 of Transfer of Property Act 1882 claiming the value of the improvements paid and secured to the defendants as on today. 4th defendant is the purchaser of survey NO: 387/1. On the basis of detail estimate for land

development works measurement and abstract, 4th defendant has claimed total cost of improvement as on today. On the basis of a statement prepared by D.W-5 Shivayogi Byakod, the agriculture consultant he claimed Rs.2,01,62,100/- from the petitioner of the case in respect of suit land. The statement prepared by the D.W-5 is marked as Ex.D-27 in the evidence.

10. It is shown in the Ex.D-27 that the plaintiff has invested Rs.3,60,000/- for land clearance by Hitachi for removal of occasia plants, Rs.4,77,000/- for earth work levelling of un-even lands by the machinery, Rs.44,00,000/- for improving the fertility of the land Rs.3,74,000/- excavation of trench for murrum bund, Rs.11,56,000/- for refilling of murrum for embankment of murrum bund, Rs.2,09,000/- for excavation for stone bund, Rs.1,71,000/- for stones for bund, Rs.17,100/- for the construction of stone bund, Rs.90,000/- for farm yard manure, Rs.60,000/- for biological culture, Rs.40,00,000/- for labour expenses for development, Rs.2,65,000/- for erection of one transformers and 4 number of light poles, the aforesaid costs of have been clearly mentioned at Sl.No:1 to 3, 5,7,11 to 13 in Ex.D-27. The total cost shown in the serial No: 1,3,5,7,11, 13 of said statement will be Rs.1,12,55,100/- (One crore Twelve Lakh fifty-five thousand one hundred). D.W-1 deposed in his evidence that, he spent Rs.1,12,55,100/- for levelling the earth, removal of occasia plant improvement of fertility of land, excavation of trench for murrum, stones for bund, construction of stone bund, erection of one transformer, farm yard manure, biological culture and labour expenses for the development of the suit land. Now the question

before the court is that whether the operations of agricultural activities such as manuring and levelling the land or improvements within the meaning of Section 51 of T.P Act or not.

11. It is a settled principle of law that, ordinary operations of agriculture such as manuring and levelling land are not improvements within the meaning of this section, my reason is supported by the decision of Hon'ble High court of Madras reported in AIR-1971MAD 198 between Mariyappa Tevar and Kaliammal and AIR 1985 SC 1102 between Bhrahma Sanathana Dharma Mahamandal Vs Premkumar. Thus it is clear before the court that, 4th defendant is not entitled for the cost of improvement made for the levelling the earth, removal of plants, improvement of fertility of land, construction of stone bund and labour charges. U/s 51 of T.P. Act cost incurred for repairs of property are also not improvement. Further defendant has shown in serial No: 9 of the statement Ex.D-27 that, he constructed a bridges for approach roads at UCR masonry with pipes for which he spent Rs.3,30,000/-. It is significant to note that, he constructed said bridge for the approach of roads to reach the land and cultivate the suit property and this cannot be considered as improvement within the meaning of section 51 of T.P.Act. Therefore 4th defendant is not entitled to claim Rs.1,12,55,100/- + Rs.3,30,000/- + Rs.5,43,500/-(Sl No: 6) from the petitioner as these investments are made for the manuring and levelling the lands.

12. In this interim petition 4th defendant has claimed Rs.94,500/-, Rs.3,75,000/- for digging bore well and install the pump set, Rs.3,10,000/- for the construction of farm

house in suit land and Rs.39,30,000/- to plant the coconut trees, Rs.10,00,000/- interest on invested capital Rs.50,000/- per year into 20 years and 20 lakhs expenditure towards crop husbandry 10 thousand per acre X 20 years. This court already given a finding that, 4th defendant is not entitled to claim Rs. 1 crore 83 lakh 6 hundred, out of Rs.2 crore 1 lakh 62 thousand 1 hundred as shown in exhibit Ex.D-27.

13. Now the question before the court is that whether the 4th defendant is entitled to claim Rs.1 crore 62 lakh 83 thousand 5 hundred out of Rs.2 crore, 1 lakh 62 thousand 1 hundred.

This section provides aid to the transferee of certain land, on which the transferee has prepared some improvements bonafide under a wrong assumption that he himself has a good title over that property. If this bonafide transferee is later on evicted by the person having a good title over that property he can claim his right for compensation of all the improvements which he had made over the property under bonafide believe. The purchaser can take a plea of his right that he right to get compensation for improvement made under good faith under defective title and will become entitled to the compensation which must be equal to the market value of the improvements so made at that time.

As every coin has two sides, here the TP Act does also have two sides that in one the protection of rights of the bonafide purchaser, and second its exception. There is one exception to the general rule for the protection of bonafide purchaser's right and is dealt by section 52 of TP Act.

Two conditions must be fulfilled before the equity enacted in this section arises and these are as follows;

a)The person evicted must be a transferee and

b)He must have made the improvements believing the good faith that, he was absolutely entitled.

14. A thing shall be deemed to be done in good faith where it is in fact done honestly, whether it is done negligently or not. If a person consciously avoids making an enquiry, though he may have belief in the matter, it would not be a belief in good faith. The cross examination of D.W-4 11 Venkappa Garasangi dated 17.07.2012 clearly discloses that, he filed an petition before the court on 14.02.2005 praying for implead him as additional defendant in the case and it was allowed by the court. In the said petition he admitted in the accompanied affidavit that, he spent Rs.5 lakh for the repair of land. Further he admitted that, after filing I.A NO-6 he did not make any improvements in the suit land except an installation of a bore well.

15. Improvement made pending litigation are not made in good faith, for the party knows he is running a risk and if he is in possession under a decree, he must be aware that, the decree may be reversed on appeal.

16. It is significant to note that, prior to application in hand the purchaser of the property has adduced evidence before the court on 11.04.2011 and he prayed to allot the share to plaintiff excluding the area purchased by him and his brother, but same was dismissed by the court. In the evidence in respect of previous petition in the case in

hand, D.W-4 has given evidence before the court and subjected for cross examination on 03.10.2007. The cross examination dated 03.10.2007 clearly discloses that, D.W-4 did not make necessary enquiry prior to purchase of suit property. The purchaser of the property had not taken reasonable care before the purchase of the property. His cross examination clearly discloses that, prior to registration of sale deed in respect of suit property he did not enquired the Malaghan regarding the family history of Naikwadi. It is significant to note that, the appeal was pending before the concerned appellate court when he got the registration of sale deed in respect of suit property. The purchaser Venkappa Garasangi had not made enquiry with the previous purchaser or family of the plaintiff prior to purchase of the suit property. The parties are fighting for their share in the suit property from 1970. Such being the case, the purchaser of the property could have made proper investigation or enquiry regarding the dispute between the plaintiff and his family members. But he did not make any enquiry with anyone prior to purchase of the property. Thus it is clear before the court he omitted to make enquiry as to the circumstances and therefore the sale cannot be said to believe in good faith that he has acquired an absolute title. Therefore he is not entitled for the improvement made in the suit property pending litigation as he did not take reasonable care and enquired about the title with any person.

17. This court already passed final decree on 24.04.2010. Purchaser of property has not locustandy to object the report submitted by court commissioner.

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- Ex.P-2 to 4 :- R/R's of R.S No: 3/90
Ex.P-5 :- C/c of judgment in O.S No: 149/89
Ex.P-6 :- C/c of Register N0-I extract of O.S
58/79
Ex.P-7 :- C/c of Register N0-I extract of O.S
149/89

LIST OF WITNESSES EXAMINED BY RESPONDENT

- D.W-1 :- Laxman Basappa Katageri
D.W-2 :- Sidramappa Basalingappa Sidagond
D.W-3 :- Laxmappa Satteppa Metagudda
D.W-4 :- Venkappa Sangappa Garasangi
D.W-5 :- Shivayogi Revanasiddappa Byakod
D.W-6 :- Sidramappa Sidagond
D.W-7 :- Ashok Metagudda
D.W-8 :- Govind Mallappa Naik

LIST OF DOCUMENTS MARKED ON BEHALF OF RESPONDENT.

- Ex.D-1 :- R/R of R.S NO: 387/2
Ex.D-2 to 6 :- Tax paid receipts
Ex.D-7 :- C/c of depositions in O.S 58/79
Ex.D-8 & 9 :- C/c of Sale deed
Ex.D-10 :- M.E No: 4507 & 4508
Ex.D-11 :- RSA No: 36/88
Ex.D-12 :- R/R of R.S NO: 386/3
Ex.D-13 :- R/R of R.S No: 386/3B
Ex.D-14 :- R/R of R.S NO: 387/1
Ex.D-15 & 16 :- M.E No: 4296 & 5068
Ex.D-17 :- M.E No: 7005
Ex.D-18 :- R/R of R.S No: 387/1
Ex.D-19 :- R/R of R.S NO: 387/1
Ex.D-20 :- Receipt of Godavari Sugar Mill

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- Ex.D-21 :- Tax paid receipt
- Ex.D-22 :- C/c of Sale deed
- Ex.D-23 & 24 :- C/c of sale deed dated 22.07.2002
- Ex.D-25 :- Electiricty Bill
- Ex.D-26 :- C/c of Chief examination in O.S 62/10
before Senior Civil Judge Mudhol
- Ex.D-27 :- Detail list of land development
- Ex.D-28 :- Certificate issued by R.R Konaraddi
Engineer and contractor
- Ex.D-29 :- Certificate issued by Nagappa
Lokappa Teli
- Ex.D-30 :- Letter issued by Parashuram
Hanchate
- Ex.D-31 :- quotation estimate of Maruti
Borewells
- Ex.D-32 to 34 :- Quotation of Sree Laxmi Traders
- Ex.D-35 :- Letter issued by Sadappa Kumbar
- Ex.D-36 :- Quotation of electricals
- Ex.D-37 :- Farm house estimate report
- Ex.D-38 :- Map of farm house
- Ex.D-39 :- Estimate of cross drain work
- Ex.D-40 :- Plan Structure of cross drain work
- Ex.D-41 :- Yeild certificate issued by A.H.O
- Ex.D-42 :- Life value account of coconut trees
- Ex.D-43 :- letter issued by Siddaramappa
Ullagaddi
- Ex.D-44 :- Detailed estimate for land
development

Prl. Civil Judge & JMFC
Mudhol.