

IN THE COURT OF THE CIVIL JUDGE & J.M.F.C.
AT BANAHATTI

: PRESENT :

Miss. Shushma T.C.
B.Com., LL.B.,
Civil Judge & J.M.F.C., Banahatti

Dated this, the 22nd day of April, 2022.

O.S No.08/2022

1. Shashikumar S/o Bhimrao Valyapur,
Age: 53 years, Occ.: Agriculture,
R/o: Allamaprabhu Nagar, Terdal,
Tq: Rabakavi-Banahatti.

.... Plaintiff

(Represented by Sri. A.J.V., Advocate)

- Vs -

1. Gandhana W/o Anand Mamadapur,
Age: 41 years, Occ.: House work,
R/o: LIG 119, Mahantesh Nagar, Post: Belagavi.

.... Defendant

(Represented by Sri. A.V.B., Advocate)

: PARTIES IN I.A No. I & II:

1. Shashikumar S/o Bhimrao Valyapur

.... Applicant/ Plaintiff

- Vs -

1. Gandhana W/o Anand Mamadapur

.... Opponent/Defendant

: COMMON ORDERS ON I.A NO. I & II :

The plaintiff has filed I.A No.1 & 2 U/o 39 rule 1 and 2 of CPC, seeking an order of temporary injunction against defendant restraining her from alienating or creating any charges over the suit landed property bearing R.S No.60/3 measuring 2A-0G situated at Terdal till disposal of this suit and seeking to restrain defendant from interfering with his peaceful possession and cultivation of the suit landed property bearing R.S No.60/3 measuring 2A-0G situated at Terdal till disposal of this suit respectively.

2. In support of I.A No.1 & 2, plaintiff has sworn to an affidavit stating that, he is in possession and cultivation of the suit property since 04.09.1989. He became owner of the suit land by virtue of registered Will executed in his favour by his maternal grandfather named Hanamant on 26.12.1985. After the death of testator, his name is entered as owner in the record of rights and is cultivating the suit land without any obstruction and interference from anybody. This being the fact, defendant got created false, illegal and unregistered relinquishment deed in her favour on 12.02.2008 and got entered her name in the

property extracts without his knowledge. Even though her name is entered in the property extracts, plaintiff is in possession and cultivation of the suit land. It is submitted that, he applied before AC Jamakhandi for deleting her name from the said property extracts of suit land and the same was allowed. Thereafter, revision petition was preferred before DC by defendant and the said order was set aside with a direction to approach civil court for declaration of ownership. On the basis of the above said order, she is trying to cause obstruction to his possession and cultivation and also threatened to dispossess him from the suit land. It is submitted that, defendant is trying to take advantage of her name entered in the property extract of the suit land and is trying to alienate the same to others and is trying to create charge over the suit landed property. It is submitted that, alleged relinquishment deed is illegal and not binding on him as he is the owner in lawful possession and cultivation of the suit land. But defendant is trying to dispossess him from the suit land and is causing obstruction for his possession and cultivation of suit landed property. It is submitted that, he has got prima facie case and balance of convenience lies in his favour and if the applications are not

allowed, he would be put to irreparable loss and injury which cannot be compensated in any terms and hence prayed to allow these applications.

3. On the other hand, defendant appeared through her counsel and filed written statement along with memos stating to consider the contents of written statement as objection to I.A No.1 & 2. It is specifically contended in the memos that, the relief claimed under I.A No.1 cannot be granted for the reason that, part of suit property is already acquired under Kudachi-Bagalkot Railway project and hence, alienation of suit landed property for the extent as stated in application would not arise and further, the relief claimed in I.A No.2 also cannot be granted for the reason that, plaintiff was never in possession of the suit landed property since from 2008 and only to cause loss to defendant for cutting sugar cane crops grown in the suit property, the application is filed.
4. It is contended by defendant in the written statement that, plaintiff himself has executed relinquishment deed in her favour on 12.03.2008 out of his own will and wish in respect of the suit landed property bearing R.S No.60/3 measuring 2A-0G situated

at Terdal village by signing on each and every page of the said deed and has put her in possession since then. It is further contended that, plaintiff is having an evil eye on the compensation amount granted to the defendant in respect of suit property under acquisition of portion of her land for Kudachi-Bagalkot Railway project. Further, since the plaintiff and defendant are brother and sister and after the execution of relinquishment deed in favour of defendant, both parties have acted upon the same and hence, in view of the relationship of parties, there is no compulsion for the registration of the document which is executed by plaintiff out of his will and wish. Further it is contended that, till the date of execution of relinquishment deed, plaintiff was in possession of the suit landed property by virtue of will executed in his favour but, after the execution of relinquishment deed, defendant is put in possession of the same.

5. It is further submitted that, plaintiff was suffering loss from 2006 to 2008 to meet his family necessities and he approached the husband of defendant who was an Engineer and requested for a hand loan of Rs.8,00,000/- to clear all his dues and other family necessities. Therefore, plaintiff being the owner of suit

property, out of his own will and wish he transferred the suit property in favour of defendant on 12.03.2008 by way of unregistered relinquishment deed by signing. Since from the date of execution of the said deed, defendant has been put in possession of the suit land and is cultivating the same and her name is entered in the property extracts. Further it is submitted that, husband of defendant died on 25.05.2010 and the plaintiff is having an evil eye on the compensation amount granted in her favour in respect of portion of the suit property which is acquired for Railway project. It is further submitted that, plaintiff is unkind person who is harassing his own family members for extracting money with the help of court of law and accordingly, has filed another suit before this court numbered as O.S.No.103/2022. Hence, on these grounds prayed to reject the applications.

6. Heard the arguments of both sides and perused the materials placed on record.
7. On the basis of rival contentions of the parties, the points that would arise for my consideration are as follows:
 1. Whether the plaintiff has made out prima facie case on I.A No.1 & 2?

2. In whose favour balance of convenience lies?
3. Who will be put to irreparable loss or injury?
4. What order?

8. My answers to the above points are as under:

Point No.1 : In the **Negative**.

Point No.2 : Balance of convenience lies in favour of defendant in so far as I.A No.1 & 2 are concerned.

Point No.3 : Defendant will be put to irreparable loss and injury, if TI is granted in respect of I.A No.1 & 2.

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

: REASONS :

9. **Point No.1**: The plaintiff has filed this suit for declaration and injunction against defendant. The contents of the above applications are discussed in detail in the above paragraphs and hence, let us discuss the merits of the applications. Plaintiff has filed I.A No.1 is filed seeking to restrain defendant from alienating or creating any charges over the suit landed property bearing R.S No.60/3 measuring 2A-0G situated at Terdal till disposal of this suit and I.A No.2 is filed seeking to restrain defendant from interfering with his peaceful possession and cultivation of the suit landed property.

10. It is the definite case of plaintiff that, plaintiff and defendant are brother and sister. Their mother named Shobha is the daughter of Hanamanth Yallappa Mativaddar and Gandharevva, both died around 15 years ago and was the maternal grandfather. The said deceased had 8 children. The above named maternal grandfather was the original owner of suit land bearing R.S No.60/3 measuring 8A-20G along with other lands and out of love and affection towards plaintiff, he executed a registered will dated 26.12.1985 in his favour bequeathing 2A-0G land in suit property out of 8A-20G. He died on 04.09.1989 and after his death the properties were divided among his children. Since 1989, plaintiff is the owner in possession and his name is entered in the property extracts of suit land and presently, plaintiff along with his brothers are cultivating the suit land and are growing sugar cane and turmeric crops. This being the fact, he got to know that, defendant created a false relinquishment deed dated 12.03.2008 in her favour in respect of suit land and got entered her name in the property extract on the strength of said deed. Since, the same is unregistered, no title passes on to the defendant and the same is not binding on plaintiff. It is submitted that, there was no need for him to transfer the suit

land to defendant as the suit land is the only property of plaintiff.

11. It is further submitted that, on the strength of her name appearing in the property extracts, she is trying to alienate the suit land to others. Further, it is also learnt by plaintiff that, some portion of suit land is acquired for laying Kudachi-Bagalkot Railway and for getting compensation amount, avoiding plaintiff who is the true owner of suit land. Mutation entries bearing 684/2007-2008 is false and created by defendant to engulf the property of plaintiff. As on the date of filing of the suit, plaintiff is in possession and cultivation of the suit land. But, defendant claims to be the owner on the strength of alleged relinquishment deed which is disputed by plaintiff and is trying to cause obstruction to his peaceful possession and enjoyment over the suit land and also is trying to alienate the same to others. Hence, he has filed this suit against defendant and the applications. On these grounds prayed to allow I.A No.1 & 2.
12. On the other hand, defendant has filed detail written statement and the contents of the same has already been discussed in

detail in the above paragraphs. Hence, without repeating the same, I would like to proceed with discussing the merits of the application.

13. In support of I.A No.1 & 2, plaintiff has produced certified copy of will executed in his favour in respect of suit land. This is not disputed by defendant. The RTC extract of the suit land measuring to an extent of 2A-0G and on perusal of the same, the name of plaintiff is appearing in column No.9 on the strength of orders passed by AC, Jamkhandi and the same was set aside subsequently by DC as per the own submission by plaintiff. It is pertinent to note that, name of defendant is appearing in column No.12 meant to mention the name of persons in possession of property. The RTC extracts of the year 1988-89 to 2000-2001 is produced and on perusal of the same, the name of defendant is appearing. Further, alleged copy of relinquishment deed dated 12.03.2008 is produced. On perusal of the same, it is alleged to have executed by plaintiff in favour of defendant for her maintenance they being brother and sister and has handed over the possession of the suit land. The same is disputed by plaintiff. The copy of order passed by revenue courts are produced. The photographs, sugar cane bills

standing in the name of one Ashok Bhimappa Valyapur, sale bill of wheat crop wherein, the name plaintiff is mentioned. The tax paid receipts for the years 2018-19 to 2021-22 wherein, the name of defendant is appearing in the column meant to mention the name of person in possession and the name of defendant is mentioned as the person paying tax. The affidavit of adjacent owner stating that, plaintiff is in possession of the suit land is produced.

14. On the other hand, defendant has produced mutation register wherein, the name of defendant is mentioned as got mutated her name based on the relinquishment deed on 14.03.2008 in respect of suit property. The RTC extract of suit land pertaining to the year 2008, wherein the name of plaintiff is appearing, relinquishment deed, RTC extract of suit land pertaining to the years 2012 & 2008-09 to 2021-22, wherein the name of defendant is appearing on the strength of relinquishment deed. Mutation registers, letter issued by Prabhulinga co-op. society in the name of defendant showing nil balance for the mortgage loan of property, it is stated that, she has cleared the loan taken on suit property standing in her name. The copy of notice issued by AC, Jamkhandi dated 30.11.2017 with regard to

compensation amount awarded in respect of suit property wherein, 9G-10 Anna is acquired for railway project and on perusal of the same, the name of defendant is mentioned as owner of land bearing R.S No.60/3 and there is a mention of compensation amount awarded for her land. Further, the affidavits of her other brothers are filed stating that, she is in possession of the suit land, employee information of the husband of defendant is produced, wherein, he was working as an Asst. Engineer in municipality, Gokak and received copy of letter requesting Gokak office to send the service records of the deceased husband of defendant who died on 25.05.2010 for the purpose of granting pension to her. The copy of statement of assets filed by husband of defendant to government for the year 2008 wherein, the suit landed property measuring 2A-0G is mentioned in column No.2 as standing in the name of his wife i.e., defendant. Copy of certificate dated 18.12.2007 issued by ICICI bank stating that, charge over the suit property is cancelled from the bank and on perusal of the same it is observed that, plaintiff had obtained hand loan from the bank and charge over the suit land was created. The death certificate of husband of defendant is produced.

15. It is argued by learned counsel for plaintiff that, he has produced the registered will to prove his title and the execution of alleged relinquishment deed is seriously disputed by him which is unregistered and also the date of bond is different from the date mentioned in the deed. Moreover, his name is entered in the record of rights of the suit property since 1988. Further, he has filed the affidavits of neighboring land owner who state that, plaintiff is in possession and cultivation of the suit land and he has produced the sugar cane bills sold to factory and is growing maize and sugar cane and is doing all works of owner of the suit land. He has relied on decisions as under:

- (a) In 2017 (4) KCCR 3615 between Ramachandra Narayan Talawar Vs. Kumar Soukharya & others – it is observed that, relinquishment deed is a compulsorily registerable document and speaks about the admissibility of the document in evidence.
- (b) In 2011 (1) CCC 473 between Pariti Suryakanthamma & another Vs. Saripalli Srinivasa Rao & another – it is observed that, unregistered document required to be registered is inadmissible in evidence and though it can be used for a collateral purpose, cannot be used to set up title as title is not a collateral purpose.

16. On the other hand, learned counsel for defendant has argued that, plaintiff has not approached this court with clean hands and there are two other suits filed by him along with his brother named Ashok against their sisters i.e., their own family members and the same is not forthcoming in the plaint. Moreover, he himself has signed on each page of relinquishment deed who himself purchased bond paper and executed the same in favour of defendant out of his own wish and will. Further, after lapse of 8 long years, this suit is filed by plaintiff. On the strength of relinquishment deed, her name is entered long back and was put in possession since then and further, in order to bring this suit within the period of limitation, he filed before revenue court and his name was appearing in the suit property extract for a period of only 18 days and subsequently the said order was set aside. On the strength of earlier order, he is claiming to be the owner in possession after the execution of relinquishment deed in the year 2008 in favour of defendant. Further argued that, portion of the suit land is acquired for railway project and the notice was issued in the name of defendant as she is in possession of the same. Since, defendant is in possession, granting the relief as claimed in I.A No.2 would

not arise. Though the relinquishment deed is unregistered, the same can be looked into for collateral purpose and moreover, the parties have acted upon it. He relied on following decisions:

- (a) In AIR 2002 Delhi 151 between Rohit Dhawan Vs. Malhotra & another – it is observed that, grant of temporary injunction is a discretionary relief and party is not entitled for the same if suppressed the facts.
- (b) In ILR 2002 Kar 1803 between Divisional controller KSRTC & another Vs. G.P.Raghavendra – it is observed that, interim order or temporary injunction is granted by courts in aid of main relief to a person on the footing that, he is prima facie entitled to the right on which he has based the claim for interim measure till the time the validity of the claim or right that has been put forward is investigated.
- (c) Between S.Kaladevi Vs. V.R.Somasundaram & others – it is with regard to marking of unregistered document and proceeding with the case.

17. It is a settled law that, while considering an application under Order 39 Rule 1 & 2 of CPC, court has to look into prima facie case and not to examine the case on merits that, whether the plaintiff is likely to succeed in the case or not. Plaintiff has to make out prima facie case for the grant of discretionary relief of temporary injunction. It is a settled position of law that, one who seeks equity, must show equity to others and should come

with clean hands to have a discretionary relief of the Court, such as order of temporary injunction. It is also a settled law that, a party is not entitled to an order of injunction as a matter of course. Grant of injunction is within the discretion of the court and such discretion is to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the court that, unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit. The court further has to satisfy that, non-interference by the court would result in irreparable injury to the party seeking relief.

18. In the light of the above principles, when we look into the present case on hand, based on the rival contentions urged by both the parties and after careful consideration of the pleadings of the parties, it is observed that, there is a dispute regarding the title to the suit property between the parties. The plaintiff is denying the execution of alleged relinquishment deed dated 12.03.2008 in respect of suit landed property but, the same is opposed by defendant saying that, plaintiff himself has executed by signing the same and since then, she is put in possession and cultivation of the same and her name is entered in the

property extracts. It is pertinent to note that, defendant is admitting the title to the suit landed property prior to execution of relinquishment deed i.e., till 2008. It is specifically contended that, he was running under loss and hence, he had approached husband of defendant who gave money and accordingly, this deed was executed in her favour by plaintiff. The materials before the court prima facie show that, plaintiff had obtained hand loan from the bank and charge was created over the suit landed property which was subsequently declared to be free of charge after the payment of hand loan. Further, the assets statement of the deceased husband of defendant shows that, in the year 2008 itself, the suit landed property was standing in the name of defendant and the deceased had declared the same before the government as he was serving as a government servant as Asst. Engineer.

19. The notice issued by AC, Jamkahndi shows that, 9G land is acquired for the railway project and the same is issued in the name of defendant in the year 2017 and the compensation amount is awarded in her name showing herself as owner of suit landed property. The property extracts of suit landed property after 2008 shows that, the name of defendant is

entered since then showing that, she is in possession of the same. Further, the bills produced by plaintiff, there is no mention of property number and the same is standing in the name of one Ashok. Further, sale bill shows that, plaintiff has sold maize and barley. But in the plaint, it is stated that, he is cultivating sugar cane crops. Further, the property number is not mentioned.

20. It is very evident from the document that, already portion of suit landed property to an extent of 9G is acquired for Kudachi-Bagalkot railway project and hence, the claim of plaintiff to restrain defendant from alienating suit landed property measuring 2A-0G as claimed in I.A No.1 is not maintainable for the reason that, the suit landed property is not measuring so much extent as of now in the name of defendant for her to sell the same to others if at all she is doing so. Further, when it comes to the relief claimed as per I.A No.2, the documents produced by parties, prima facie shows that, defendant is in possession of the suit landed property and the notice awarding compensation is also issued in her name and in the tax paid receipts also, the name of defendant is mentioned as owner of the suit landed property. The question whether, the execution of

alleged relinquishment deed is valid, whether the same is created by defendant or not is a matter of trial and requires to be adjudicated after full fledged trial. Further, the question that, whether the relinquishment deed though unregistered, any title passes or not will also be considered after recording evidence, as the defendant has stated that, the same can be looked into for collateral purpose and the parties have acted upon it very long back and this suit is filed only to claim the compensation amount granted in the name of defendant in respect of suit landed property.

21. Prima facie the plaintiff has failed to show that, suit landed property is measuring 2A-0G and the defendant may alienate the entire landed property. As I have already discussed, the portion of the same is already acquired. Moreover, the plaintiff has not shown that, he is in possession of the suit landed property after 2008. The contention that, alleged relinquishment deed is created, requires to be adjudicated after trial. Hence, without going into the merits of the case, at this stage, if any order of temporary injunction is granted on I.A No.1 & 2, it may prejudice the rights of the parties. At this juncture, plaintiff has not made out prima facie case before this Court to exercise its

judicial discretion to grant an order of temporary injunction on I.A No.1 & 2. Accordingly, point No.1 is answered in the **Negative.**

22. **Point No.2:** The plaintiff has not made out prima facie case for the grant of temporary injunction in his favour in respect of I.A No.1 & 2 and by looking into the documents produced by both parties, it appears that, there is no independent document to show that, after 2008, he was and is in possession of the suit landed property. As I have already discussed, the relief claimed in I.A No.1 does not survive for the reason that suit landed property does not exist to the whole of the measurement as stated in the application in the name of defendant. Further, the affidavits of adjacent owners and of the brothers of defendant will not prima facie prove possession of either party as both side documents are contrary to each other. but, based on the available materials, it is just and proper to hold that, balance of convenience lies in favour of defendant. Hence, point No.2 is answered accordingly.

23. **Point No.3:** By considering the facts and circumstances of the case and based on my discussion on above points, since the

plaintiff has not made out prima facie case in respect of I.A No.1 & 2 and he has not convinced this court that, balance of convenience lies in his favour and moreover, has not shown that, judicial intervention is necessary to protect his alleged right over the suit property, failing which, he will be put to great hardship which cannot be compensated in any terms. Hence, point No.3 is answered accordingly.

24. **Point No.4:** In view of my discussions on above points, I proceed to pass the following:

: O R D E R :

I.A. No.1 & 2 filed by plaintiff U/o
39 rule 1 and 2 of CPC are hereby
rejected.

There shall be no order as to costs.

(Dictated to the stenographer, transcribed by her, transcript corrected and then signed and pronounced by me in the open court on this, the 22nd day of April, 2022)

Sd/-

**(Shushma T.C.)
Civil Judge & JMFC, Banahatti.**