

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

:PRESENT:

Miss. Shushma T.C.

B.Com., LL.B.,

Civil Judge & J.M.F.C., Banahatti.

O.S No.147/2022
(Old No.228/2017)

Dated this, the 09th day of January, 2023.

1. Mahadev S/o Mahalingappa Chamakeri
and another

... Plaintiffs

(Represented by Sri. L.S.A., Advocate)

- Vs -

1. Basavaraj S/o Lakkappa Chamakeri,
and 6 others.

... Defendants

(Represented by Sri. S.C.U., Advocate)

: PARTIES TO I.A No. IV :

1. Mahadev S/o Mahalingappa Chamakeri,
2. Ashok S/o Mahalingappa Chamakeri,
Both are R/at: Mahalingapur, Tq: Mudhol.

... Applicants/plaintiffs

- Vs -

1. Basavaraj S/o Lakkappa Chamakeri,

R/o: Chamakeri Oni, Mahalingapur, Tq: Mudhol.

... Opponent/Defendant No.1

: ORDER ON I.A No.IV :

The plaintiffs' have filed this application U/o 39 Rule 1 and 2 R/w sec.151 of CPC seeking an order of temporary injunction against defendant No.1 restraining him or anybody claiming through him from alienating, handing over or mortgaging suit properties bearing CTS No.241 measuring 67.54 sq. mtr, and CTS No.240 measuring 48.59 sq. mtr, both situated at Mahaligeshwara gudi main road, opposite to Akkamahadevi gudi in Mahalingapur, Tq: Mudhol to anybody till disposal of this suit. This application is filed when the case was posted for plaintiff evidence prior to the transfer of this case.

2. In support of this application, plaintiff No.1 has sworn to an affidavit stating that, he is swearing to this affidavit on behalf of himself and on behalf of plaintiff No.2. It is submitted that, inspite of knowing the fact that, one Devendra S/o Malakappa Shiddapur has got half share in

suit properties and after his death, defendant No.2 to 8 being his legal heirs would get ownership right and interest, defendant No.1 got executed a false and fabricated registered sale deed dated 11.03.2016 from the legal heirs of Devendra Shiddapur. It is submitted that, defendant No.1 got executed the false sale deed to CTS No.241 measuring 67.54 out of it to H-1 East-West 9 feet North-South 49 feet 6 inch and he knows that, suit properties are meant for commercial use which are situated in Mahalingapur main road and by not disclosing the same, he has got mentioned the wrong place as Chinchali Oni. Hence, the said sale deed is not binding plaintiffs. Further submitted that, there is no partition regarding suit properties till date of filing this application between plaintiffs, defendant No.2 to 8 and another owner named Rachayya Kadapatti.

3. It is submitted that, during the pendency of this suit, few portions were in the names of defendant No.3 to 8 and defendant No.1 colluding with other defendants got entered

his name in both the suit property extracts and by taking advantage of his name appearing in property extracts, he is trying to alienate suit properties to others and if he succeeds in doing so, more loss would be caused them. Further, it is submitted that, they have got prima facie case and balance of convenience lies in their favour and if the application is rejected, irreparable loss and injury would be caused to them and the same cannot be compensated in terms of money and on the other hand, if the application is allowed, no harm or loss would be caused to defendant No.1. On these grounds, prayed to allow the application.

4. On the other hand, learned counsel for defendant No.1 filed a memo stating to consider the contents of written statement as the statement of objection to this application and also submitted that, I.A. No.1 filed by plaintiffs is already rejected by the court by passing considered order. In the written statement, defendant No.1 has specifically contended that, he purchased one of the suit property

bearing CTS No.241 measuring 9 feet and North-South 49 feet 6 inch from defendant No.2 to 8 under registered sale deed dated 11.03.2016 within the boundaries mentioned in written statement and another suit property bearing CTS No.240 is in no way concerned to him. Further, one Channappa Sidramappa Padasalagi was the owner of one of the suit property bearing CTS No.241 measuring 67.54 sq. mtrs and he sold western portion to one Devendrappa Siddapur and eastern portion to one Gangappa Chamakeri vide registered sale deeds dated 05.05.1952. Their names were mutated to the property extracts and in 1976, they effected partition and western portion of CTS No.241 (H1) measuring 9' x 49'-6' is allotted to the share of Devendrappa Siddapur and eastern portion i.e., CTS No.241 (H2) is allotted to the share of Gangappa Chamakeri. Since then, the owners are in possession of their respective shares.

5. It is contended that, Gangappa Chamakeri died leaving behind plaintiffs and others as his LRs in 1983 and 2015,

eastern portion of CTS No.241 (H2) was fallen to the share of plaintiffs in partition and accordingly, the owner of CTS No.241 (H2) i.e., Devendrappa Siddapur died on 07.12.1985 leaving behind defendant No.2 to 8 as his LRs and to meet their family necessities, they alienated their share of property i.e., H1 portion to defendant No.1 for valuable consideration under a registered sale deed dated 11.03.2016. Since then, he is in possession of the said portion. It is contended that, when defendant No.1 moved wardi before CTS office for getting his name mutated to the suit property extract, plaintiffs objected the same and their objections are rejected by ADLR and ordered for the mutation of his name as per RTS/CTS-SR No.01/2016-17 dated 01.06.2017. Further contended that, OS No.99/2016 is pending before the court of Hon'ble Prl. Civil Judge, Mudhol in respect of same subject matter between same parties. He is a bonafide purchaser and the plaintiffs have not challenged any of the entries made earlier and have come up with suit and application only to harass

defendant No.1. Hence, on these grounds prayed to reject the application.

6. Heard 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 plaintiffs have made out prima facie case?
2. In whose favour balance of convenience lies?
3. Who will be put to irreparable loss or injury, if an order of temporary injunction is rejected?
4. What order?

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

Point No.1 : In the Negative.

Point No.2 : Does not arise for consideration.

Point No.3 : Does not arise for consideration.

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

: R E A S O N S :

9. **Point No.1:** Plaintiffs have filed this suit for declaration seeking to declare false registered sale deed dated 11.03.2016 got executed by defendant No.1 in respect of Sl. No.1 suit property bearing CTS No.241 situated at Mahalingapur as null and void. The brief facts of the contents of the application and statement of objection is explained in detail in the above paragraphs and hence, I am discussing the merits of the application. It is the definite case of plaintiffs that, one Mahalingappa Jamkhandi, Devendra Shiddapur and Gangappa Chamakeri were joint owners of suit properties bearing CTS No.240 measuring 48.59 sq. mtr and CTS No.241 measuring 67.54 sq. mtr. Accordingly, in 1952, their names are jointly entered in suit property extracts. In one of the suit property bearing CTS No.240, towards the western side one Rachayya Kadapatti and in eastern side one Devendrappa Shiddapur were owners in possession of the said property. To another suit property bearing CTS No.241, one Devendrappa and Gangappa were in joint possession towards western and eastern side respectively. But, though Devendra Shiddapur

had only joint 1/2 share in suit properties, he got executed false partition in 1976 with his family members showing as owner to the entire suit property bearing CTS No.241. Accordingly, defendant No.2 to 8 got executed false sale deed dated 11.03.2016 in respect of CTS No.241 (H1) measuring 9 feet x 49.6 feet in favour of defendant No.1 and wrongly mentioned the place as Chinchali Oni instead of Mahalingapur. Hence, the sale deed is not binding on them. There is no partition between plaintiffs, defendant No.2 to 8 and another joint owner. Hence, defendant No.1 is trying to alienate suit properties to others and he should be restrained by this court through this application. Hence, prayed to allow the application. In support of this application, plaintiffs have produced property register cards, sale deed and letters issued to CTS officers.

10. On the other hand, defendant No.1 has opposed the entire case of plaintiffs and contended that, he is in no way concerned to the property bearing CTS No.240 and he purchased suit property bearing CTS No.241 (H1) measuring 9

feet x 49.6 feet from defendant No.2 to 8 vide registered sale deed. As plaintiffs never challenged earlier mutation entries, their suit is not maintainable. Further, plaintiffs have suppressed about the pendency of civil suit regarding same subject matter between same parties. Hence, prayed to reject the application. In support of his contentions, defendant No.1 has produced copy of O.S No.99/2016 in respect of suit properties and the same was dismissed as not maintainable. Order of ADLR, Jamkhandi rejecting the application of plaintiffs herein, who had objected for mutating the name of defendant No.1 to property extract based on sale deed. Property extracts.

11. It is argued by learned counsel for plaintiffs that, defendant No.2 to 8 have alienated excess portion of property to defendant No.1 than they were owners for the same. Hence, further if defendant No.1 alienates, more loss would be caused to them. In order to keep the property intact, prayed to allow the application. On the other hand, learned counsel for defendants argued that, 3 suits were filed and OS No.99/2016

was dismissed as not maintainable and thereafter, this suit is filed and IA No.1 is already rejected by the court. Further, they have not preferred any appeal against the order of rejection of appeal in RTS case and no appeal is preferred regarding dismissal of OS No.99/2016.

12. 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.

13. In the light of the above principle, when we look into the present case on hand, based on rival contentions urged by both the parties, there is a dispute regarding the very execution of alleged sale deed with the measurements mentioned therein along with place. Further, there on perusal of the entire materials, it is clear that, plaintiffs have sought interim relief of temporary injunction against defendant No.1 but, has shown both the properties as suit properties. On careful perusal of the materials on record, it is clear that, no person can alienate any property to which he is not concerned. Here, defendant No.1 is not at all concerned with one of the suit properties bearing CTS No.240. On this ground itself, plaintiffs are not entitled for the discretionary relief of injunction. Further, plaintiffs have suppressed material facts

regarding the dismissal of civil suit and also regarding filing of RTS case before ADLR. At this juncture, I would like to rely on the following decisions:

- (a) In **1996 ILR Kar 1618** between **Mirza Mohammed Yousuf Baig and Deccan enterprises, it is held that**, “when the subject matter of the suit and the facts relied upon are same in both the suits, it is necessary for the plaintiff to disclose all the material facts which are within his knowledge in order to invoke the jurisdiction of the court of equity. It is well recognized principle that for grant of equity relief the plaintiff must come to the court with clean hands and he must disclose all facts for and against him in order to get the discretionary relief of injunction”.
- (b) In **Seema Arshad Zaheer and Others Vs. Municipal Corporation of Greater Mumbai and Others, (2006) 5 SCC 282**, the Hon'ble Supreme Court of India has observed, "The discretion of the Court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff (i) existence of a prima facie case as pleaded, necessitating protection of the plaintiff's rights by issue of a temporary injunction (ii) when the need for protection of the plaintiffs rights is compared with or weighed against the need for protection of the defendants' rights or likely infringement of the defendant's rights, the balance of convenience tilting in favour of the plaintiff and (iii) clear possibility of irreparable injury being caused to the plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised

only when the plaintiffs' conduct is free from blame and he approaches the Court with clean hands."

- (c) In **AIR 2010 SC 296** between **Kashi Math Samsthan Vs. Srimad Sudhindra Thirtha Swamy**, wherein, it is observed by the Apex court that, "It is well settled that, in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that, he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury, if injunction is not granted. But, it is equally well settled that, when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the Court to grant injunction in his favour even if, he had made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if so injunction order is granted."

As I have already stated, plaintiffs have not approached this court with clean hands and have suppressed material facts. Further, on bare perusal of the relief claimed in the application cannot be granted to the plaintiffs against defendant No.1 as he is not concerned with both the suit properties. The plaintiffs have to prove regarding their case in trial regarding the existence of false execution of sale deed in

favour of defendant No.1 by defendant No.2 to 8 regarding suit property bearing CTS No.241 (H1) portion. To the entire portion of 67.54 in CTS No.241, temporary injunction is claimed by plaintiffs along with another property bearing CTS No.240. The plaintiffs have not made out prima facie case against opponent/defendant No.1 regarding the prayer claimed in this application. Further, the grant of discretionary relief like temporary injunction is granted to the party who approaches the court with clean hands and without suppressing facts. The contentions urged by plaintiffs will be decided after full fledged trial. Hence, without going into the merits of the case, it is clear that, plaintiffs have not made out any prima facie case for the grant of discretionary relief of temporary injunction in their favour. Hence, this court cannot exercise its judicial discretion to grant an order of temporary injunction. Accordingly, I proceed to answer point No.1 in the **Negative.**

14. **Point No.2:** It is a settled position of law that, plaintiff must satisfy to the court the existence of prima facie case and

balance of convenience and irreparable loss in his favour for the grant of temporary injunction. All the three ingredients have to be fulfilled by the plaintiff. If any one of the ingredients is not shown to the satisfaction of the court, the court cannot grant the discretionary relief of temporary injunction in favour of plaintiff. Here, in the present case, the plaintiffs have not made out prima facie case for the grant of temporary injunction in their favour and hence, it is just and proper to hold that, consideration of this point does not arise at all. Hence, point No.2 is answered accordingly.

15. **Point No.3:** By considering the facts and circumstances of the case and based on my discussion on above points, since plaintiffs have not made out prima facie case and have not convinced this court that, balance of convenience lies in their favour and moreover, have not shown that, judicial intervention is necessary to protect their right over suit properties, failing which, they would be put to great hardship which cannot be compensated in any terms. Hence, point No.3 is answered accordingly.

16. **Point No.4:** In view of my above discussions and reasons given while answering point No.1 to 3, I proceed to pass the following:

: O R D E R :

I.A No. IV filed by plaintiffs' U/o 39 rule 1 and 2 R/w sec.151 of CPC is hereby rejected.

No order as to costs.

(Dictated to the stenographer, transcribed by her, transcript corrected by me and then signed and pronounced by me in the open court on this, the 09th day of January, 2023)

(Shushma T.C.)
Civil Judge & J.M.F.C., Banahatti.