

**IN THE COURT OF THE ADDITIONAL SENIOR CIVIL
JUDGE & J.M.F.C., AT DEVANAHALLI.**

PRESENT

**Sri. PATIL HARISH RANGANAGOWDA,
B.A., LL.B.(Hon's)
Addl. Senior Civil Judge & J.M.F.C.
Devanahalli.**

Dated this day of 29th July, 2021.

O.S.No.118/2018

Sri. Rajanna : **Plaintiff**

(Plf. - By Sri. N.K.M.
Advocate)

- V/s. -

Smt. Pillamma & Others : **Defendants**

(D1 to 4 - By N.S.G.,
Advocate)

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ORDER ON I.A.Nos.1 & 5

The Plaintiff has filed I.A.No.1 under order 39 Rule 1 & 2 of C.P.C seeking to restrain the defendants and their agents or any body acting under them from interfering with his possession over the suit property. My learned predecessor in office by order dated 03-11-2018 has directed the parties to maintain status quo till further orders. Thereafter the defendants filed I.A. under order 39 Rule 4 of C.P.C seeking to vacate the said interim order granted on 03-11-2018. Heard arguments on both the sides on said application.

2. Facts of case are unfurled here under :

It is pleaded by the Plaintiff that the suit property bearing Sy.No.60/1 was purchased by his grand father by name Chikkamunishamappa under registered sale deed dated 08-08-1951 to an extent of 2 acre 36 guntas. Since then he was in possession of said property till his last breath. Thereafter his two sons namely Muniyappa and Narayanappa came in possession of said property and got mutated their names over the said property. Subsequently the oral partition took place between Muniyappa and Narayanappa. The said Muniyappa got an area measuring 1 acre 17 guntas and Narayanappa got an area measuring 1 acre 13 guntas. Subsequent to the death of Muniyappa, the Narayanappa got mutated his name over the said property. As things stood thus, the husband of defendant No.1 by name B. Munishamappa got mutated his name over the suit property to an extent of 1 acre 17 guntas by M.R.No.10/

96-97 on the basis of sale deed executed by Muniyappa in favour of said Munishamappa on 01-11-1965. As on the date of execution of said sale deed, the property was possessed by his grand father Chikkamunishamappa and therefore the said Muniyappa had no right to convey the said property. Therefore the said sale deed is not binding on him. He further pleaded that he has challenged the entry of name of said Munishamappa by filing revenue appeal before Assistant Commissioner at R.A.No. (De)110/2007-08. The Assistant Commissioner allowed the appeal and set aside the mutation entry stands in the name of said Munishamappa. The son of said Munishamappa who is husband of defendant No.2 and father of defendants No.3 & 4 assailed the said order of Assistant Commissioner by filing revenue revision before Deputy Commissioner at Revision petition No.72/2009. The Deputy Commissioner rejected the appeal by confirming the order of Assistant Commissioner. The said husband of defendant No.2 assailed the said order before Hon'ble High Court of Karnataka by filing W.P.No.38460/2016. The said petition is pending for consideration. Meanwhile the defendants interfered with his possession over the suit property which led to filing of suit bearing O.S.No.763/2007. During pendency of suit he noticed some defects in the relief claimed over there and he withdrew the said suit with a liberty to file fresh suit. Therefore he filed this fresh suit seeking to declare that he is the owner of suit property having been succeeded from his father Muniyappa. Therefore he seeks to declare his right over the suit property and further sought to nullify the sale deed dated 01-11-1965 executed by Muniyappa in favour of Munishamappa.

3. The defendants appeared through their counsel and traversed the plaint averments by filing written statement. They denied the rights of plaintiff over the suit property. In addition to it, they contend that the suit brought by the Plaintiff is hopelessly barred by law of limitation in as much as challenging the sale deed of the year 1965 in 2018. Therefore they contend that the Plaintiff is not entitled to the relief sought for. They further pleaded about sale deed executed by father of Plaintiff in favour of husband of defendant No.1 under registered sale deed dated 01-11-1965 and delivering the possession of suit property. They have also contended about the revenue dispute raised before the revenue court. In addition to that, they have also pleaded about earlier litigation initiated by the Plaintiff. They have also contended that they have grown grapes fruit in the suit property by drawing the water from the borewalls situated in property bearing Sy.No.58/A. Therefore they seek to dismiss the suit.

4. They filed statement of objections to the interim request of Plaintiff and in addition to that they have also filed application seeking to vacate the interim order on the ground that the Plaintiff is been continuously interfering with their possession over suit property. Therefore they seek to vacate the interim order of maintaining status quo ordered by this court. Heard both the sides.

5. Having heard both the sides and having perused the material on record, following points would arise for my consideration :

1. Whether the Plaintiff made out prima-facie case in issuing injunction?
2. Whether the Plaintiff proves that, the balance of convenience lies in his favour?
3. Whether the Plaintiff proves that, if injunction is refused he would be put to irreparable loss and which cannot be compensated in terms of money?
4. Whether the defendants makes out a ground to vacate the interim order dated 03-11-2018 in directing the parties to maintain status quo?
5. What order?

6. Having heard the counsel on record my findings to above points is as under :

Points Nos.1 to 3 : **In the Negative,**

Point No.4 : **In the Affirmative,**

Point No.5 : **As per final Order
for the following :**

REASONS

7. **Points Nos.1 to 4 :** In order to avoid the repetition of facts, these points are taken together for common consideration. It is the assertion of Plaintiff that he is the owner and in possession of suit property which is been disturbed by the defendants which led to filing of this suit. He shown apprehension of interference by the defendants in his possession over the suit property. Therefore he filed I.A.No.1 seeking to injunct them from interfering with his possession over the suit property. As mentioned above this court by order dated 03-11-2018 directed the parties to maintain status quo in respect of I.A.No.1 & 2. The defendants being not satisfied with the said order have filed the application seeking to vacate the said interim order. The claim of defendants is based on registered sale deed dated 01-11-1965 executed by father of Plaintiff in favour of husband of defendant No.1. Therefore they claimed that they have succeeded the property from said purchaser. They seek to dismiss the suit.

8. **Based on rival contentions of parties, the following undisputed facts can be culled out here under :**

1. It is not in dispute that the one Chikkamunishamappa had purchased the suit property bearing Sy.No.60/1 in all measuring 2 acre 36 guntas.
2. It is not in dispute that the said Chikkamunishamappa had two sons namely Muniyappa and Narayanappa.
3. It is also not in dispute that the said sons have divided the property. It is also not in dispute that an area measuring 1 acre 17 guntas has fallen to the share of Muniyappa who is father of Plaintiff herein. Similarly an area measuring 1 acre 13 guntas had fallen to the share of said Narayanappa.
4. It is also not dispute that the name of purchaser B. Munishamappa came to be entered in the revenue records by virtue of M.R.No.10/1996-97 which is on the basis of sale deed.
5. It is also not dispute that the subsequent to the death of Munishamappa the defendants filed application seeking to mutate their name over the suit property and at that time the Plaintiff objected the mutation by filing appeal before Assistant Commissioner at R.A.No.110/2007. The Assistant

Commissioner by noticing the mutation to an entire extent of 2 acre 36 guntas in the name of B. Munishamappa had struck down the said mutation entry No.130/2006-07 and order to mutate the name of Plaintiff.

6. It is also not dispute that the son of defendant No.1 and husband of defendant No.2 assailed the order of Assistant Commissioner by filing revision petition before Deputy Commissioner who rejected the appeal which is been assailed in the writ petition and said writ petition is pending for consideration.
7. It is also not dispute that the Plaintiff himself filed suit property bearing O.S.No.763/2007 seeking declaratory relief by way of adverse possession over the suit property and he has withdrawn the said suit in the year 2015 and filed this instant suit in the year 2018.
8. The only dispute between the parties is in regard to their right title, interest and possession over the suit property. The Plaintiff contends that his father had executed sale deed without any right. Therefore he assailed the sale deed of the year 1965.

9. It is also well settled law that the party who sought the equitable relief of injunction has to show the existence of prima-facie case, balance of convenience and irreparable loss. In addition to that he has to show before the court that he is equitable to the other party and he is not responsible for any action complained against him by other party.

9. The Plaintiff has buttress his case by placing reliance on copy of sale deed, copy of death certificate of his grand father Chikkamunishamappa, Genealogical tree, mutation entry, record of rights and copy of sale deed of husband of defendant No.1, copy of mutation and copy of death certificate and copies of mutations and order passed by revenue authorities in nullifying the entry of husband of defendant No.1. He has also produced the copies of plaint and order sheet in earlier litigation in O.S.No.763/2007. He has also placed reliance on record of rights, copy of patta book, survey sketch and Hiduvali certificate and photographs. On the other hand the defendants have also placed reliance on copy of sale deed, mutation, record of rights, order of revenue authorities and copies of earlier litigation and copies of death certificate and copy of interim order passed by Hon'ble High Court of Karnataka in W.P.No.38460/2016 and copy of E.C., photographs and bills pertains to sale of grape fruits.

10. Admittedly the plaintiff himself contend that the partition has taken place between his father and his uncle Narayanappa. He did not clearly mention as to when exactly the said partition was taken place. The said fact would throw some assistance in analyzing the rights of plaintiff over the suit property. Admittedly he has contended in the present and in the previous suit that his father had executed sale deed in favour of husband of defendant No.1 under registered sale deed dated 01-11-1965. Interestingly in the previous suit bearing O.S.No.763/2007 he had contended that the sale deed executed by his father in favour of husband of defendant No.1 was only a nominal sale deed. He has contended in the said suit that his father had borrowed loan from the husband of defendant No.1 and executed nominal sale deed by retaining possession with him. Therefore he had sought the relief of declaration by way of adverse possession over the suit property. Subsequently he has withdrawn the said suit on 16-09-2015 with a permission to file fresh suit on the ground that the Hon'ble Apex Court in the case of Gurudwara Sahib V/s. Gram Panchayath Village Sirthal & another has held that the plaintiff cannot maintain the suit seeking declaration by way of adverse possession. Though he withdrawn the said suit on 16-09-2015, he has filed this present suit on 28-08-2018 i.e., after lapse of nearly about 2 ½ years from the date of withdrawal of suit. He has not explained as to why he did not file suit soon after withdrawal of earlier suit.

11. The main claim of plaintiff is that as on the date of execution of sale deed by his father in favour of father of defendant No.1, the original owner by name Chikkamunishamappa was alive and therefore his son had no right to deal with the property. In other words, he has contended that as on the date of execution of sale deed by father of plaintiff, the grand father by name Chikkamunishamappa was alive. Therefore the title vest with the said Chikkamunishamappa on the date of execution of sale deed and son of Chikkamunishamappa i.e., father of plaintiff could not have alienated the property. Therefore according to him the said husband of defendant No.1 did not acquire any valid title. Admittedly the plaintiff has challenged the sale deed of the year 1965 in the year 2007 by filing suit bearing O.S.No.763/2007. There is no explanation as to why he has not challenged the said alienation within reasonable period from the date of sale deed. The entire case of plaintiff is based on death certificate of Chikkamunishamappa. The said death certificate indicates the date of death as 21-05-1971. Interestingly the said entry takes place during pendency of suit bearing O.S.No.763/2007. The plaintiff has not explained as to why the date of death of his grand father was not recorded soon after his death. Admittedly the entry takes places after lapse of 43 years from the date of death of said Chikkamunishamappa. Therefore the entry could have been made only after the direction from the competent court. The plaintiff has not explained as to how he get the late entry in the death register. Therefore the said fact creates cloud over the genuinity of entry in the death register extract about date of death.

12. On the other hand the sale deed executed by father of plaintiff itself indicate the fact that the said Chikkamunishamappa was not alive. The said sale deed also indicate the recitals of division of said property by Muniyappa and Narayappa prior to the said sale deed. Therefore the recitals of said sale deed indicates death of Chikkamunishamappa and division of property by the sons of said Chikkamunishamappa on the date of said sale deed. The conduct of plaintiff in challenging the 1965 sale deed in the year 2007 that to on the basis of said death certificate create cloud over his right of succession over the suit property from his grand father. Interestingly the brother of plaintiff by name Anjinappa did not join the plaintiff in assailing the said sale deed. He has not explained as to how he could alone succeed the property from his father and grand father. Therefore the conduct of plaintiff dis entitles him in seeking equitable relief of injunction.

13. The claim of possession of plaintiff over suit property is based on Photographs, Tax paid receipts and copy of hissa mojani, copies of tippani, mula hissa and survey sketch and akarbadh. Interestingly the copy of hissa and tippani were prepared on 17-07-2018. By that time the dispute between plaintiff and defendants was already raised before competent revenue and Civil court. Therefore the said document need to be considered only after full pledge trail. The said document need to be put in trail. Therefore it is not safe to rely on the said document at this stage since they came in light during pendecny of litigation. Interestingly the survey sketch has also been

prepared subsequent to the litigation started between the parties. The plaintiff has also placed reliance on copy of Patta Book and Hiduvali certificate which were also issued subsequent to the litigation started between parties. The patta book was issued by virtue of M.R.No.15/2009-10. The said mutation entry is based on the order passed by Deputy Commissioner in revision petition No.72/2009. By that time the dispute between the parties over suit property was pending before Civil court. Therefore all the entries produced by the plaintiff to buttress his case in proving possession over suit property are prepared subsequent to the litigation started between plaintiff and defendants. Therefore no much credentials has to be given to said document in assessing the prima-facie case. The said documents have to be tested in trail. The very name of plaintiff came to entered by virtue of order passed by Assistant Commissioner. Therefore the said survey sketch, Hissa Mojani, Aakarbandh cannot be taken into consideration at this stage.

14. The plaintiff has placed more reliance on the order passed by Assistant Commissioner and Deputy Commissioner in nullifying the entry made in the name of husband of defendant No.1. Admittedly the correctness of said order in regard to said entry is pending before Hon'ble High court of Karnataka in Writ petition filed by son of defendant No.1. Interestingly the order of Assistant Commissioner did not indicate taking note of sale deed of husband of defendant No.1. The Assistant Commissioner has struck down the entry in M.R.No.130/2006 on the ground that the name of husband of defendant No.1 is entered to an entire extent of 2 acre 36 guntas. According to the Assistant

Commissioner the name of husband of defendant No.1 entered in respect of entire 2 acre 36 guntas. Therefore he has struck down the entry of name of husband of defendant No.1 to an entire extent. The said order has been assailed before the Deputy Commissioner who dismiss the said appeal. Interestingly the Deputy Commissioner had made some passing remarks about extinguishment of right of purchaser as not seeking mutation soon after purchasing of property. However by that time the suit bearing O.S.No.763/2007 was pending and Deputy Commissioner had directed the parties to abide by the decision of Civil Court. Therefore he had rejected the said revision. As indicated above the entire document placed by the plaintiff are subsequent to the dispute arose between them. Therefore the documents tendered by the plaintiff creates cloud over its genuinity. The photographs produced by the plaintiff did not indicate his possession over the suit property. On the other hand the photographs produced by the defendants indicate growing of grapes in the disputed property. They produced photographs by standing in the grape garden. They also produced some bills/invoices for having sold the grape fruits. Therefore the said document further creates cloud over the possession of plaintiff over suit property. Therefore at this stage the plaintiff has not made out any prima-facie case in issuing injunction. As held above there is divergent contention of plaintiff in the previous suit and in the present suit in regard to said sale deed. Further more the conduct of plaintiff in assailing the sale deed and revenue entry after lapse of nearly about 42 years create cloud over his right and his conduct which does not inspire the court to accept his contention at this stage. Therefore the plaintiff failed

to make out prima-facie case. When he failed to make out prima-facie case the consideration of balance of convenience and irreparable loss does not arise at all. As noticed above, this court by ordered dated 03-11-2018 directed the parties to maintain status quo over I.A.No.1 & 2 which is in respect of possession and apprehension of alienation. The said order did not indicate the recording of status of possession of parties on the date of said order. Therefore the said order which did not record the status of property on the date of issuing said order cannot be continue as it would create further problem to the parties.

15. The learned counsel for plaintiff relied upon the decision of Hon'ble Apex Court in the case of Anathula Sudhakar V/s. P. Bucchi Reddy to contend that whenever there is cloud over the title, the title follows the possession. Therefore according to him the title of defendant No.1 is cloud and said title does not pass on to husband of defendant No.1. Therefore the title vest with the plaintiff. Therefore he seeks to infer the possession of plaintiff over the suit property. The said submission cannot be accepted for the reason that the plaintiff himself dispute the title after lapse of nearly about 45 years from the date of said sale deed. Therefore the conduct of plaintiff himself dis entitles him to contend so. Therefore the facts and circumstances of the present case are different from the facts and circumstances narrated in the judgment cited by learned counsel for plaintiff. Therefore I hold that the plaintiff has failed to prove the prima-facie case. Hence consideration of other two

factors does not arise. **Hence I hold point Nos.1 to 3 in the Negative and point No.4 in the Affirmative.**

16. **Point No.5** : In the light of aforesaid finding on the above said point, I proceed to pass the following :

ORDER

The application filed by Plaintiff at I.A.No.1 under order 39 Rule 1 & 2 of C.P.C is hereby rejected. The application filed by defendants Under order 39 Rule 4 of C.P.C. is hereby allowed by vacating the interim order. The observation made in the order are limited to the disposal of these instant application. Therefore the said observations will not come in the way of parties in proving their respective contention.

Call on : 07-08-2021 for issues.

**(PATIL HARISH RANGANAGOWDA)
Addl. Senior Civil Judge & J.M.F.C.,
Devanahalli.**