

KABR500048972024



**IN THE COURT OF THE II ADDL. CIVIL JUDGE & J.M.F.C.,
AT :HOSAKOTE**

PRESENT

SMT. CHAITRA V. KULKARNI,
B.A.,LL.B., LL.M.
II ADDL. CIVIL JUDGE & J.M.F.C.,HOSAKOTE

Original Suit No.265/2024

Dated this the 19th Day of December 2024

PLAINTIFFS: Sri. Jayaprakash Vasudev Nayak

-V/s-

DEFENDANTS: Sri. H.K. Mariyappa

IA NO.I

APPLICANT / ORI. PLAINTIFF :

Sri. Jayaprakash Vasudev Nayak
(By Sri.B.S.,Advocate)

-V/s-

OPPONENTS / ORI. DEFENDANTS :

Sri. H.K. Mariyappa

(By Sri.N.R.R., Advocate)

**ORDER ON APPLICATION UNDER ORDER XXXIX
RULE 1 AND 2 R/W Sec.151 OF CPC**

The present application has filed by the plaintiff by seeking temporary injunction to restrain the defendant, his agents, attorneys executors, henchmen, etc., from interfering with the peaceful possession and enjoyment of the suit schedule property.

2. In the affidavit it is stated that plaintiff is the the sole and absolute owner of the property bearing Survey No. 458/6, measuring to an extent of 08 Guntas (Eight Guntas) situated at Soolibele Road, Hoskote Town, Kasaba Hobli, Hoskote Taluk, Bengaluru. Further, he had purchased the same from the Defendant through a Registered Sale Deed dated 31-08-2012, the RTC and Mutation Register

with respect to Suit Schedule property were mutated in his name, since the date of purchase, he has been in peaceful possession and enjoyment of the Suit Schedule property. However, on 01-07-2024 around 3.00 pm the defendant along with his henchmen unlawfully entered into suit Schedule property and attempted to interfere with his peaceful possession and had ventured to encroach the land with malafide intention. The outrageous act of the defendant was put to rest by him and his son with the help of neighbors and well-wishers. Further stated that the he anticipated that the defendant may take law into his hands and forcibly encroach the Suit Schedule property and also dispossess him at any time. The defendant has been unreasonably harassing him without having any kind of right, title or interest over the Suit Schedule property. The defendant is also owning a land which is situated at the Northern side of the Suit Schedule property, for

which a Registered Sale Agreement has been executed in his favour in respect of which, he has instituted a suit in O. S No. 357/2022 (O. S No. 695/2014) and the same is pending for consideration before the Hon'ble Senior Civil Judge, Hoskote. The defendant is putting up huge structure in the said adjacent property and is trying to block the entrance of his Schedule Property. Further there is an imminent threat to his lawful possession and interest of over the Suit Schedule Property. Hence he sought to allow present application.

3. On the other hand, the defendant has filed written statement and also filed memo by adopting the contents of the written statement as objections to the present application, in his written statement, the defendant has denied all the averments of the plaint and further contended that, plaintiff has suppressed the true and correct facts and has filed

suit with fabricated and concocted documents in order to mislead this Court and there is no cause of action for the suit and the cause shown in the plaint is imaginary and the suit is hopelessly barred by limitation. There is no triable issue in the suit and the plaintiff has filed this suit as chance litigation. Furtehr contended that, the schedule property in question is the ancestral joint Hindu Family property and the suit schedule property has fallen to the share of the defendant herein under a Partition Deed 30.01.2010, among the father of the defendant Sri. M. C. Venkataramanappa, the mother Smt. Sarojamma and Sons Sri. Kunjappa and the defendant along with the sister of the defendant Smt. Thanjamma, which is registered as Document No. 4584/2009-10, Book-1, stored in CD No. HSKD135, registered in the Office of the Sub Registrar, Hosakote. The said Partition Deed undoubtedly discloses that it is joint family property

which has been partitioned by metes and bounds. That the defendant herein along with his children became the joint owners of the suit schedule property which is Item No.2 of the 'C' Schedule property under the said Partition Deed. Further, the defendant has two wives i.e., Smt. Padma and Smt. Tulasi, one son by name Sri. Hemanth Kumar and one daughter Smt. Rashmi out of the wedlock of 2nd wife. That all of the above form the Hindu Undivided Joint Family and the suit schedule property is the Hindu Undivided Joint Family property. That there is no division of the joint family properties among the said joint family members. That the defendant has got transferred the Khatha in his individual name in respect of the ancestral property. That the defendant without knowing the consequences and due to threat and coercion of the Plaintiff who is now retired IPS Officer was constrained to execute the Sale Deed in favour of

the Plaintiff on 31.08.2012 and the defendant has not received any sale consideration from the plaintiff, though it is stated in the Sale Deed that the sale consideration of Rs. 16,00,000/- (Rupees Sixteen Lakhs Only) was paid by the plaintiff under a cheque. Further the plaintiff has accompanied with the defendant and after encashing the cheque, the plaintiff has taken away the said amount of Rs. 16,00,000/- (Rupees Sixteen Lakhs Only). Further the said sale deed is notional Sale Deed which was executed on 31.08.2012 as the defendant alone was not the owner of the suit schedule property and he did not possess the right to alienate the entire property in favour of the plaintiff. That the defendant has not put the plaintiff in vacant physical possession of the schedule property and has not handed over the original documents pertaining to the suit schedule property to the Plaintiff. That the defendant even to this day is in

peaceful possession and enjoyment of the suit schedule property. The plaintiff is not in physical possession or symbolic possession of the suit schedule property at any point of time, much less either prior to filing the above suit or on the date of filing of the suit. That the Plaintiff has no semblance of right, title and interest over the suit schedule property. The Sale Deed executed by the defendant in favour of the Plaintiff is a notional document, as the defendant has not received any sale consideration or transferred the possession of the schedule property in favour of the plaintiff. Further, the suit schedule property is no more an agricultural property but it is a municipal property having assigned with Municipal Khatha No. 67160100017501 and the Identification Number in respect of the property belonging to the defendant vide KT/12/99/225634.

4. Further, the defendant has been ever since from the day of the property having fallen to his share under the registered Partition Deed is in continuous uninterrupted possession of the schedule property and has assessed the schedule property to municipal taxes and has remitted up-to-date taxes to City Municipal Council, Hosakote. Further he is putting up water tank in and over the suit schedule property from past 8 months .Further, the plaintiff has filed a suit for Specific Performance against the defendant in O.S.No. 695/2014 later renumbered as OS No.357/2022 and the said case is pending adjudication. The defendant has been defending the said suit by filing the Written Statement denying the Plaint averments. One Smt. H K Devi and 8 others have filed a suit for Partition in respect of the Joint family properties, wherein the Suit Schedule Property is one such property in O.S.No.1417/2017 and thereafter upon transfer it is

renumbered as O.S.No. 639/2022 against one Sri. Kunjappa and 5 others, wherein the Plaintiff herein is arrayed as defendant No.6 and many other suits, including the suit filed by the present plaintiff are pending, inspite of which the plaintiff has filed the present suit, without being in the possession of the suit property. Hence on these grounds sought to reject the application.

5. Heard both sides. Perused the materials placed on record.

6 The following points arise for my consideration :

POINTS

- 1) Whether the plaintiff has made out a prima-facie case in his favour?
- 2) Whether the balance of convenience lies in favour of the plaintiff?

- 3) Whether the plaintiff would suffer loss and hardship if the application is rejected?
- 4) What order?

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

Point No.1 : In the Affirmative,

Point No.2 : In the Affirmative,

Point No.3 : In the Affirmative,

Point No.4 : As per final order

for the following:

REASONS

8. Point No.1 to 3: The present suit has filed for relief of permanent injunction and plaintiff has filed the present application to restrain the defendant from interfering with suit schedule property. It is the case of the plaintiff that defendant has sold the suit property to him under the registered sale deed of the year 2012 and he

has been in the possession from the date of purchase of the same. To prove his prima-facie case he has produced sale deed, RTC extract, mutation extract etc, and in rebuttal the defendant has produced partition deed, E-khata, tax paid receipt, certified copy of order sheet and plaint in O.S.No.357/2022 and 639/2022, 2839/2022, etc. It is to be noted that, the suit schedule property is Sy.No. 458/6 and the property shown in the sale deed and schedule of the property in the sale deed and plaint are one and same, whereas the defendant has produced the partition deed of the year-2010 wherein the suit property has allotted to the share of present defendant which prima-facie shows that before selling the suit property to the plaintiff, the defendant had acquired suit property in the year 2010. Further, the defendant has also produced certified copy of plaint in O.S.No.695/2014, new O.S.No.357/2022 which

has filed by the present plaintiff against the defendant, for the relief of specific performance, wherein the suit property shown in the plaint is different from the present suit property, even though the defendant has taken contention that, there is a suit pending between himself and plaintiff in respect of the suit property, again in respect of same, the plaintiff cannot file the present suit but there are two suit schedule properties in the said suit, on perusal of certified copy of plaint presented in said suit filed by the plaintiff for relief of Specific performance, it prima facie appears that, there are two suit schedule properties in the said suit, the boundaries shown to the both properties are identical with present suit property and on going through plaint averments of said suit it appears that, the present plaintiff has averred that the possession of the property has handed over to him on the date of execution of agreement to sell and

even in the present suit also the plaintiff has averred that the suit property is in his possession. It is to be noted that, in the present suit, the plaintiff has produced the registered sale deed which is already executed in favour of plaintiff by the defendant, whereas, in the said suit the plaintiff has sought to execute sale deed on the basis of agreement of sale, which prima-facie shows that there are sale deed as well as agreement to sell between the plaintiff and defendant, even though prima-facie it appears that the date of agreement of sale and the sale deed of the present suit is same but the present suit property is agricultural property, whereas the suit property of the O.S.No.357/2022 is municipal property, under such circumstances eventhough there is a pendency of the suit between plaintiff and defendant, the said suit is for relief of specific performance and prima-facie the suit property also

appears to be different, under such circumstances when the plaintiff has prima-facie proved that he is in the possession of the suit property as a owner and even though defendant has contended that there is already suit pending between himself and plaintiff, but the suit property prima facie appears to be different and moreover in the case on hand, already the defendant has executed the sale deed in favour of plaintiff and sale deed prima facie reveals that, the possession of the property has been handed over tot he plaintiff and the contention of the defendant regarding fabricating the documents cannot be decided at this stage and it needs full fledged trial. The Rtc extract is standing in the name of the plaitniff as on date of filing of suit, even though same has denied by the defendant, but there is no docmuent to show that the defendant has challenged the entry of the name of the plaintiff in RTC extract.

9. Further the defendant has stated that, he has been building the water tank in the suit property, but at this stage it cannot be decided that, the property in which the water tank is being constructed. Therefore the plaintiff has established prima-facie case and balance of convenience also leans in favour of plaintiff, if the . Hence, with above observation, I answer Points No.1 to 3 in the **“Affirmative”**.

10.**Point No.4**:- In view of the discussion made on Points No.1 to 3, I proceed to pass the following....

ORDER

The I.A.No.I filed by the plaintiffs U/O. XXXIX Rules-1 and 2 R/w. Sec.151 of the C.P.C. is hereby “Allowed”.

The defendant No.10, her henchmen, servants, anybody claiming under her are hereby

restrained from alienating the suit schedule property in any mode of alienation till further order.

Considering the peculiar circumstances of the case, there will be no order as to costs.

(Dictated to the stenographer directly on computer, typed by her, revised by me and then pronounced in the open court, on this 19th day of December 2024)

**(Smt. Chaitra V. Kulkarni)
II Addl. Civil Judge & J.M.F.C.,
Hosakote**