



**IN THE COURT OF II ADDL. CIVIL JUDGE & JMFC,
KADUR.**

Present: Sri. Ram Prashanth M.N, B.A.L,LL.B.,
II Addl. Civil Judge & JMFC, Kadur.

Dated: This the 1st day of September 2023

OS.NO.293/2021

Smt.Girijamma and another	Vs	Plaintiff
Sri. Rudrappa and others		Defendants

IA NO.1

Smt.Girijamma and another	Vs	Applicant
Sri. Rudrappa and others		Opponents

Sl.No.	Subject	Remarks
1	Provision under which the application is filed	Order 39 Rule 1 & 2 of CPC
2	Relief sought for	Temporary injunction
3	The date of which the application is filed	08.07.2021
4	Number of the application	I.A.No.1
5	The date of which the objections are filed by different opponents.	31.01.2022
6	The date of order.	01.09.2023

The plaintiff has pressed the
I.A.No.1 only on 28.08.2023 by
advancing the case.



:: ORDERS ON IA.NO.II UNDER RULE 1 & 2 OF ORDER 39

R/W 151 OF CPC ::

IA.No.1 is filed under Order 39 Rule 1 & 2 of CPC, praying to restraining the defendants from interfering with the peaceful possession and enjoyment over the suit schedule property either by their men or their agents, servants on their on the their behalf.

2. In the affidavit sworn, the plaintiff No.2 has stated that, suit schedule originally allotted to his father Sadashivamurthy under darakasth and since then in possession but the defendants without any right have tried to interfere, hence, the plaintiffs have come before the court for injunction and maintained the present application.

3. The defendant No.1 has filed written statement and objection denying the plaintiff's case and stated that the suit schedule property is not with the possession of the plaintiffs, but the same was sold by the Sadashivamurthy to Mohammed Hussain on 23.03.1970 and thereafter the Hussain has executed sale agreement to them on 15.04.1992 by handing over possession, also stated that since Sadashivamurthy sold the property without obtaining the permission, hence the grant infavour of Sadashivamurthy was canceled and property restored to the Government. However, they are in possession based upon the sale agreement dated 15.04.1992 hence, prayed to dismiss the application.

4. Heard arguments.



5. The points that would arise for my consideration are:-

(1) Whether the plaintiff is entitled for the relief of temporary injunction as sought for?

(2) What order?

6. My findings on the above points are as follows:

Point No.1 : In the Negative.

Point No.2 : As per final orders
for the following:-

REASONS

7. **Point No.1:** The plaintiff has filed the above suit for the relief of injunction against the defendants and also maintained the present application restrain from interfering in the suit schedule. The defendants have filed written statement stating that plaintiffs are not at all the owner as of now and moreover they are not in possession.

8. It is 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.

9. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury



but means only that the Injury must be a material one, namely one that cannot be adequately compensated by way of damages. The balance of convenience must be in favour of granting injunction. The court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted.

10. If on weighing competing possibilities or probabilities of likelihood of injury and if the court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. The court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit. Hence keeping the same in mind, I proceed to discuss the materials on record in the below paragraphs.

11. The **Hon'ble Supreme Court of India in "Hindustan Petroleum Corporation Limited Vs Sriman Narayan And Anr. AIR 2002 SC 2598"** has held that object of interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action, if the uncertainty was resolved in his favour at the end of the trial. It is also held that balance of convenience should also be determined. While exercising the discretion, the Court normally applies the following tests :



- (a) Prima facie case in favour of the plaintiff.
- (b) Balance of convenience lies in favour of the plaintiff.
- (c) Irreparable or injury shall be suffered by the plaintiff, if the application is not allowed.

12. The plaintiffs have stated that they are in possession of the suit schedule property having inherited from Sadashivamurthy S/o Parvathappa, where the property was granted to him by the Government under darakasth. The said aspect is not in dispute and the defendants admit the grant by the Government to the Sadashivamurthy. The plaintiff further states that, since the defendants interfered, hence they are seeking relief of injunction.

13. The defendants state that the said Sadashivamurthy has sold the property to Mohammed Hussain on 23.03.1970 for valuable consideration by handing over the possession. Hence, the plaintiffs are not in possession and also stated that the plaintiffs have not stated about the sale deed executed by Sadashivamurthy in the plaint and also the cancellation by the Assistant Commissioner. Further stated that the order has reached its finality and now the plaintiffs are strangers.

14. It is true that the property was originally granted to Sadashivamurthy S/o Parvathappa under darakasth. The defendants have furnished the original sale deed dated 23.03.1970, which is registered on 24.03.1970. As per the recitals of it, the said Sadashivamurthy has handed over the possession to the Mohammed Hussain. The said sale is not mentioned by the plaintiffs nor they have stated that even



though the sale deed is executed, they are in possession. They have totally concealed the fact of executing sale deed by the Sadashivamurthy.

15. It is also not the case of the plaintiffs that the property sold to Mohammed Hussain is another property and not the suit schedule property. Even the said contention cannot be taken because the property sold is the suit schedule property and the same is not denied by the plaintiffs. The contention of the plaintiffs counsel that as per Ex.10 & 11 i.e., the paper publication the possession is with the plaintiffs and it has been stated by the Tahasildar. Even counsel stated that as per photocopies Ex.P.28 and 29 the plaintiff is in possession and as per Ex.P.31 the plaintiff has executed sale agreement to one Thipperudraswamy for 2 acres 20 guntas in the suit schedule.

16. The contention of the plaintiff's counsel that the plaintiffs are in possession cannot be accepted at all, because plaintiffs have not stated a single word about the sale deed executed by Sadashivamurthy to Mohammed Hussain except staying it as bogus and prepared for the present case. If really it is bogus and prepared for the present case, then how, it is found place in the order of the Assistant Commissioner dated 02-02-1984. As per the said sale deed, which is a duly registered and unchallenged, the possession has been handed over to the Mohammed Hussain and also the principle i.e., possession follows title is clearly applicable to the said sale deed.



17. This court notices that the grant made infavour of Sadashivamurthy has been canceled by the Assistant Commissioner through its order dated 02.02.1984 for the reason that the said Sadashivamurthy has sold the property within 15 years by violating the conditions of the grant. Admittedly, till today the plaintiffs have not challenged the said order of the Assistant Commissioner in LND (2) 45/80-81 dated 02.02.1984, which has reached its finality. Surprisingly at the time of addressing arguments the plaintiff counsel states that they are going to challenge now.

18. The contention of the plaintiffs counsel that plaintiffs have issued legal notice to the Tahasildar and other Government officials is not going to help them because it will not revert back the title. Moreover it seems that the plaintiffs have concealed the fact of cancellation before the Hon'ble High Court of Karnataka in W.P.21455/2022. Since the claim of the plaintiffs title through Sadashivamurthy has been canceled, hence the change of khata in their name is of no use. Hence, the RTCs produced to show that the name of Sadashivamurthy continued for long time is not going to help plaintiffs as it does not come under presumption as the contrary is clear.

19. The plaintiffs have concealed material facts and as of today they are not at all the owners of the suit schedule property nor the documents, though which is marked and not subjected to cross-examination at this stage will not help the plaintiffs to corroborate the contention of their possession. The plaintiffs does not have title and without



seeking declaration, the suit for injunction is not maintainable nor the order of the Assistant Commissioner dated 02.02.1984 is challenged.

20. The plaintiffs have lost their title as per the order of the Assistant Commissioner dated 02-02-1984 and moreover the same is in their knowledge because plaintiffs have produced documents to that effect but have not stated in the plaint regarding cancellation. It is not their case that the Assistant Commissioner has canceled but they are in possession and we have come to protect possession but they have come directly stating the land was granted to Sadashivamurthy and based on it they are in possession. The said act of the plaintiffs is highly unacceptable because they should have pleaded the cancellation order in the pleading.

21. The act of the plaintiffs in not stating the same in the pleading is highly condemnable and also they know that the said order was passed on 02-02-1984 but have got managed to get the khata changed without title and also have appeared before Hon'ble High Court without title. Moreover, the plaintiffs without having title have entered into sale agreement with one Thipperudraswamy and that too having knowledge that the property as of now belongs to government, which is nothing short of a crime and they needs to be prosecuted for entering into sale agreement.

22. The defendants contend that based upon the sale deed, dated 23.03.1970 Mohammed Hussain has executed sale agreement in their favour on 15.04.1992 and have put



them in possession. The plaintiffs cannot stand on the weakness of the defendants and plaintiffs have to establish on their own strength. Mere stating that Mohammed Husain was no more and doubting the agreement dated 15-04-1992 will not help the plaintiffs as they have failed to establish their case at the first instance. The application given by the daughter of the defendants and the grant cannot be a criteria or a ground for the plaintiffs to prove the possession.

23. After purchase the property was not mutated in the name of Mohammed Hussani, however, as per the decision of the **Hon'ble High Court of Karnataka, in the case of N.Shivanna Vs. State of Karnataka reported in KLJ 1980(1) 419**, where in it is held that ; “ *A person acquiring right under a registered document, need not make report of it. It is incumbent upon the registering authority to have necessary corresponding entry in the records of the property to which the said registered document pertains. Failure on the part of the registering authority, will not jeopardise the rights of the persons acquired under the said registered document*”. In another decision reported in **1977 (2) KLJ 123 it has been held by the Hon'ble High Court of Karnataka** that; *Registered deed passes title and absence of entry in record of rights should not effect the title.*

24. The contention of the plaintiffs counsel that they do not dispute the Assistant Commissioner order dated 02-02-1984 and they will challenge but they are now seeking only the relief of injunction and hence the possession needs to be considered for grant of temporary injunction cannot be



accepted at all. As already discussed and as per the admission of the plaintiff side, their title is lost long ago and without seeking declaration they cannot file suit for injunction nor can claim it. Also till the cancellation of the grant, the sale deed executed to Mohamed Husain was in force and according to it, possession was handed over by Sadashivamurthy, hence from any angle, they are not entitled for any relief.

25. At this stage, the court opines that the plaintiffs have not made sufficient grounds to consider that they are in possession of the suit schedule. The plaintiffs have not made out prima-facie case and balance of convenience does not lie in their favour. The grant infavour of the daughter of the defendant No.1 as alleged in the Ex.P.26 is done only after the cancellation of the grant infavour of Sadashivamurthy. Hence, at this stage the same cannot be found fault with. Hence, they are not entitled for the interim relief as prayed for. Hence, with these observations I answer point No.1 in the negative.

26. **Point No.2:-** In view of my findings on point No.1, I proceed to pass the following:

ORDER

I.A.No.I filed by the plaintiffs under
Order 39 Rule 1 & 2 R/w Sec.151 of CPC is
dismissed with cost.

(Dictated to the Stenographer, typed by her to computer, revised, corrected and then pronounced in the open Court, this the 1st day of September 2023)

Sd/-

(Ram Prashanth M.N.)

II Add.Civil Judge & JMFC, Kadur.

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