



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
J.M.F.C., AT MUDIGERE**

: PRESENT :

**SRI. JAYAPRAKASH V., B.A., L.L.B.,
SENIOR CIVIL JUDGE & JMFC,
MUDIGERE**

O.S. 26/2023

DATED THIS THE 10th DAY OF OCTOBER 2023

**PLAINTIFF: Arnold D.L. Mendonsa @
Arnold Mendonsa,
S/o. Late. Victor Mendonsa,
Aged 59 years, Agriculturist,
R/o. Nirmala Estate,
Coove Village,
Balur Hobli,
Mudigere Taluk,
Chikkamagaluru District.**

**Rep. by his GPA Holder.
Mrs. Revathi Deepthi Mendonsa
W/o Arnold D.L. Mendonsa @
Arnold Mendonsa,
Aged 46 years,
Agriculturist,
R/o. Nirmala Estate,
Coove Village,
Balur Hobli,
Mudigere Taluk,**



Chikkamagaluru District.

(By Sri. H.S.Y./H.G.A., Advocate)

V/s.

DEFENDANT: 1.Smt. Murial Fernandes,
W/o H. Fernandes,
Aged about 73 years,
Door No.3-28-2248,
White House,
Kadri Temple Road,
Kankanady,
Mangaluru.

2:Smt. Flora Xavaria Fernandes,
W/o. Cliffered Fernandes,
Aged about 70 years,
R/o. Door No.25-1-56/13,
Flat No.33,
West End Manou,
Kankanady By Pass,
Mangaluru.

3:Smt. Rita Benedicta Pinto,
W/o. J. Titus Pinto,
Aged about 65 years,
R/o. Door No.18-19,
Shanthinikethana Kalpani,
Kulshekar Post,
Mangaluru.



4:Sri. Joel Pinto,
S/o. J. Titus Pinto,
Aged about 34 years,
R/o. Door No.18-19,
Shanthinikethana,
Kalpani. Kulshekar Post,
Mangaluru.

5:Smt. Javitha Pinto,
D/o. J. Titus Pinto,
Aged 37 years,
R/o. Door No.18-19,
Shanthinikethana,
Kalpani,
Kulshekar Post,
Mangaluru.

6:Smt. Lavitha Pinto,
D/o. J. Titus Pinto,
Aged about 36 years,
R/o. Door No.18-19,
Shanthinikethana,
Kalpani,
Kulshekar Post,
Mangaluru.

7:Smt. Rosy Pinto,
W/o. A.D. Pinto,
Aged about 66 years,
Thalaguru Hand Post,
Coove Village and Post,
Mudigere Taluk.



8:Smt. Dorieta Pinto,
D/o. A.D. Pinto,
Aged about 28 years,
Thalaguru Hand Post,
Coove Village and Post,
Mudigere Taluk.

9:Sri. Dariel Pinto,
S/o. A.D. Pinto,
Aged about 25 years,
Thalaguru Hand Post,
Coove Village and Post,
Mudigere Taluk.

10: Sri. Vincent George Pinto,
S/o. J.B. Pinto,
Aged about 68 years,
R/o. Flat No.101,
Vishwas Pearl,
Kankanady Old Road,
Minse Hospital,
Kankanady,
Mangaluru.

11: Sri. H.E. Nelson Pinto,
S/o. J.B. Pinto,
Aged about 66 years,
R/o. No.303,
Spnire Falt,
Near Democretic School,



Maninagara East,
Ahamadabad City.
Gujarath.

(D1 to 5, 7, 10, 11 By Sri. S.D., Advocate)
(D6 & 9 are exparte)

IA. NO. I

Applicant :- Arnold D.L. Mendonsa @
Arnold Mendonsa,

V/s.

Opponents:- Smt. Muriel Fernandes and others

**ORDER ON I.A.NO. I FILED BY THE PLAINTIFF
UNDER ORDER XXXIX RULE 1 AND 2 R/W SECTION
151 OF CPC.**

The plaintiff has filed I.A.No.I for grant of ad-interim temporary injunction in favour of the plaintiff and against the defendants restraining the defendants, their men, agents, servants or anybody claiming through them from selling the timber which are lying in the application schedule property to any prospective buyers or from cutting, felling and transporting the same



from the schedule property in any manner pending disposal of the suit.

2. In the affidavit annexed to the application plaintiff stated that he is the absolute owner of the plaint schedule property and the plaintiff purchased the plaint schedule property from S.E Ummer Khan through a registered sale deed dated 30/03/1999 which was registered in the office of the Sub-Registrar, Mudigere under document No. 1024/98-99. On the basis of the said document the khata of the plaint schedule property has been mutated to the name of the plaintiff. Plaintiff cultivated the plaint schedule property with coffee, pepper and also grown silver oak and other shade bearing trees. The plaintiff also fenced the plaint schedule property with barbed wire fence. The plaintiff is also very regular in paying the Kandayam to the concerned authorities with respect of the plaint schedule property.



3. Plaintiff further stated that except plaintiff nobody have got any kind of right, title, interest in or over the plaint schedule property. Further he submit that his children are studying at Mangaluru. Plaintiff is residing at Coove village of Mudigere Taluk. But due to the injuries sustained by the plaintiff to his spinal cord and other parts of the body he is under treatment at Mangaluru. Further he used to visit the plaint schedule property often to look after the plaint schedule property and also to do the agricultural work. Taking advantage of the same, defendant No.7 to 10 on the instigation of other defendants encroached the plaint schedule property on 15/3/2023 in the presence of one Praveen Shetty and B.S. Khader Beary. Hence the said persons questioned about the same with the said defendants about the encroachment made by them pertaining to the plaint schedule property. During that time the said defendants made galata with them and threatened them with dire consequences. Hence left with no option the said



Praveen Shetty and B.S. Khader Beary intimated the said fact to the applicant through phone. On hearing the same, the plaintiff rushed to Coove Village of Mudigere Taluk and approached the defendant No.7 to 10 and inquired about the encroachment made by them with respect to the plaint schedule property. During that time defendant No.7 to 10 told them that due to oversight and mistake they have encroached the same and hence they are going to handover the possession of the plaint schedule property in favour of the plaintiff by obtaining no objection from other defendants. Believing the words of the defendants, plaintiff kept quiet. They have not turned up and they have not handover the possession of the plaint schedule property in favour of the plaintiff.

4. Plaintiff further stated that on 1/4/2023 once again the plaintiff and his wife approached defendant No.7 to 10 and requested them to handover the possession of the plaint schedule



property in favour of the plaintiff. During that time the defendants refused to handover the possession of the plaint schedule property in favour of the plaintiff by denying the title of the plaintiff over the plaint schedule property. Defendants are hurriedly trying to sell the standing timbers to the prospective buyers which are lying in the plaint schedule property and they are hurriedly trying to search for the buyers. Further they are also hurriedly trying to cut, fell and transport the standing timbers from the plaint schedule property. In case the defendants are to succeed in their attempt in doing the said illegal and high handed acts, then petitioner will put to irreparable loss, injury and inconvenience which cannot be compensated in terms of money. Hence plaintiff prays to allow the application.

5. On the other hand defendant No.1 to 5, 7, 10 and 11 appeared through their counsel and filed written statement and filed memo by stating



that defendants are adopting written statement as objection to IA No.I. In the written statement defendant No.1 to 5, 7, 10 and 11 submitted that defendants are in possession, cultivating and enjoyment of measuring 3.00 acres of the coffee land bearing Sy.No. 271/P10 of Cove village, Baluru Hobli, Mudigere Taluk. The defendants are cultivated with coffee, pepper, banana tree, silver etc. and also fenced barbed wire along with the property. The said property is granted to defendant father by name Wilfred Pinto by government order No. 105/LGP77 dated 1/9/1977 Bhahu - Saguvali Chit No. 235/1977-78 dated 11/11/1977. After the grant the katha has been mutated in the name of the father of the defendant Wilfred Pinto under M.R. No. 9/1978-79.

6. Defendants further stated that on 03/04/1992 the defendants father Wilfred Pinto was died behind back of his daughter and sons, grandsons and grand daughter by name Muriel



Fernandez, Vincent Pinto, Pinto H.E. Nelson, Rita Benedict Pinto, Rosy Pinto. After the death of late Wilfred Pinto the schedule property katha has been mutated in favour of sons and daughter of late Wilfred Pinto as per the review petition NO. 1/2020 order before Prl. Civil Judge and JMFC, Mudigere as M.R. No. 48/2021-22. Thereafter Mrs. Rita Benedict Pinto, Mrs, Jovita Pinto, Mr. Joel Pinto, Rosy pinto are relinquish their right over the property in favour of Mrs Flora Xavaria Fernandez before Sub-register Release deed and Mrs. Murial Fernandez, Vincent Pinto and Pinto H.E. Nelson are relinquish their right over the property in favour of Mrs Flora Xavaria Fernandez before Sub-registrar Mudigere bearing BK-I-671/2022 dated 15/6/2022 through register release deed. Now the katha stands in the name of the plaintiff in the revenue records as per the said records plaintiff is the owner and possession and occupation and cultivation of the said property. It is submitted that the plaintiff



intention grab the said land to file the false suit against the defendants.

7. It is submitted that Wilfred Pinto is the owner in possession of Sy.No. 271/P10 measuring 3.00 acres at Coove village, Baluru Hobli, Mudigere Taluk. He died on 3/4/1992. After his death the defendants are enjoying the same. Defendants are legal heirs of the Wilfred Pinto. Taking advantage of the facts defendants are residing at far off the places, plaintiff has filed P and SC case before Hon'ble Prl. Civil Judge and JMFC, Mudigere bearing No. 3/2017 for succession certificate without mentioning the any defendants as parties. The plaintiff has fraudulently by not disclosing the material facts to the Court obtain the succession certificate. Thereafter the defendants are knowing the said fact and filed review petition No. 1/2020. The said petition was allowed. Thereafter the plaintiff keep quite then he filed above false suit against the defendants without cause of auction.



8. Defendants further submitted that plaintiff has pledge the schedule property, in the year of 2008 to Harindra Hegade for Rs.1,00,000/- and also the said property attached to Additional Civil Judge and JMFC and Udupi Court. The same is mention in the scheduled property RTC Column No. 11. The plaintiff is suppress the real fact and filed this suit against the defendants.

9. Defendants further admitted that plaintiff entered into agreement to sell the schedule property to one S.M. Umesh on 30/11/2015, on the date of the said sale agreement, the plaintiff has hand over possession the schedule property to the purchases by name S.M. Umesh. Now the S.M. Umesh is in possession of the schedule property. The plaintiff is not in possession of the schedule property and also the plaintiff is not absolute owner of the schedule property. S. Umesh and Hindra Hegade are the necessary parties to the case. Hence the plaintiff suit is not maintainable for not made necessary party to the



case. Hence the plaintiff is not possession, occupation, cultivation and enjoyment of the schedule property. Then the plaintiff has filed this suit only imaginary cause of auction. Hence the plaintiff has no locostand to file this suit. Hence, defendants prayed to dismiss the application.

10. Heard on both side.

11. The following points arise for my consideration.

1. Whether plaintiff has made out prima-facie case?

2. Whether Balance of convenience lies in favour of plaintiff?

3. Whether plaintiff will be put to irreparable injury and loss, if injunction is not granted?

4. What order?



12. Upon appreciation of rival contention in the arguments advanced by the both parties, my findings to the above points as follows:-

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

13. POINT NO.1 TO 3:-

These points are interlinked with each other and require common discussion. Hence these points are taken together for common discussion in order to avoid repetition of facts.

14. The plaintiff has filed the suit for declaration, possession and injunction. Plaintiff contended that he has purchased the plaint schedule property from S.E Ummer Khan by a registered sale deed dated 30/03/1999 registered as document No. 1024/98-99. On the basis of the said sale deed the khata of the plaint schedule



property has been mutated in his name. Plaintiff cultivated the plaint schedule property with coffee, pepper and also grown silver oak and other shade bearing trees. The plaintiff also fenced the plaint schedule property with barbed wire fence. Plaintiff further stated that except plaintiff nobody have got any kind of right, title, interest over the plaint schedule property. Further he submit that his children are studying at Mangaluru. Plaintiff is residing at Coove village of Mudigere Taluk. But due to the injuries sustained by the plaintiff to his spinal cord and other parts of the body he is under treatment at Mangaluru. Plaintiff stated that he used to visit the plaint schedule property often to look after the plaint schedule property. Taking advantage of the same, defendant No.7 to 10 on the instigation of other defendants encroached the plaint schedule property on 15/3/2023 in the presence of one Praveen Shetty and B.S. Khader Beary. The said Praveen Shetty and B.S. Khader Beary intimated the said fact to the applicant



through phone. On enquired about the encroachment defendant No.7 to 10 told them that due to oversight and mistake they have encroached the same and they will handover the same to plaintiff.

15. Later on defendants refused to handover the possession of the plaint schedule property in favour of the plaintiff by denying the title of the plaintiff over the plaint schedule property. Defendants are hurriedly trying to sell the standing timbers to the prospective buyers which are lying in the plaint schedule property and they are also hurriedly trying to cut, fell and transport the standing timbers from the plaint schedule property. In case the defendants are to succeed in their attempt in doing the said illegal and high handed acts, then petitioner will put to irreparable loss, injury and inconvenience which cannot be compensated in terms of money.

16. On the other hand the defendant contending that defendants are in possession,



cultivating and enjoyment of property measuring 3.00 acres of the coffee land in Sy.No. 271/P10 of Cove village, Baluru Hobli, Mudigere Taluk. The defendants are cultivated with coffee, pepper, banana tree, silver etc. and also fenced barbed wire along with the property. The said property is granted to defendant father by name Wilfred Pinto by government order No. 105/LGP77 dated 1/9/1977 Bhahu - Saguvali Chit No. 235/1977-78 dated 11/11/1977. After the grant the katha has been mutated in the name of the father of the defendant Wilfred Pinto under M.R. No. 9/1978-79. On 03/04/1992 the defendants father Wilfred Pinto was died behind back of his daughter and sons, grandsons and grand daughter by name Muriel Fernandez, Vincent Pinto, Pinto H.E. Nelson, Rita Benedict Pinto, Rosy Pinto. After the death of late Wilfred Pinto the schedule property katha has been mutated in the name of sons and daughter of late Wilfred Pinto. Thereafter Mrs. Rita benedict Pinto, Mrs, Jovita Pinto, Mr. Joel Pinto, Rosy



pinto Mrs. Murial Fernandez, Vincent Pinto and H.E. Nelson are relinquish their right over the property in favour of Mrs Flora Xavaria Fernandez through register release deed. Defendants in page No.3 para No.7 of their written statement stated that now the katha stands in the name of the plaintiff in the revenue records as per the said records plaintiff is the owner and possession and occupation and cultivation of the said property.

17. Defendants further submitted that Wilfred Pinto was the owner in possession of Sy.No. 271/P10 measuring 3.00 acres at Coove village, Baluru Hobli, Mudigere Taluk and after the death of Wilfred Pinto on 03/04/1992 defendants are enjoying the said property. Taking advantage of the facts defendants are residing at far off the places, plaintiff has filed P and SC case before Hon'ble Prl. Civil Judge and JMFC, Mudigere bearing No. 3/2017 for succession certificate without mentioning the any defendants



as parties. The plaintiff has fraudulently by not disclosing the material facts to the Court obtain the succession certificate. Thereafter the defendants are knowing the said fact and filed review petition No. 1/2020. The said petition was allowed. Thereafter the plaintiff filed above false suit against the defendants without cause of auction.

18. Defendants further submitted that plaintiff has pledge the schedule property, in the year of 2008 to Harindra Hegade for Rs.1,00,000/- and also the said property attached to Additional Civil Judge and JMFC and Udupi Court. The plaintiff is suppress the real fact and filed this suit against the defendants.

19. Defendants further stated that plaintiff entered into agreement to sell the schedule property to one S.M. Umesh on 30/11/2015, on the date of the said sale agreement, the plaintiff has hand over possession the schedule property to the purchaser by name S.M. Umesh. Now the



S.M. Umesh is in possession of the schedule property. The plaintiff is not in possession of the schedule property and the said S.M. Umesh and Hirndra Hegde are the necessary parties to the case. Plaintiff is not absolute owner of the schedule property. Hence, defendants prayed dismiss the application.

20. The plaintiff to substantiate his contention has produced the sale deed dated 30/03/1999 executed by S.E. Ummer Khan in favour of plaintiff pertaining to the suit schedule property. Plaintiff also produced the RTC of Sy.No. 271 of Coove village, Mudigere Taluk, which shows the RTC has been mutated in the name of plaintiff as per MR 3/1999-2000. Plaintiff has produced the certified copy of the MR 3/1999-2000 which discloses that plaintiff has purchased the suit schedule property from S.E. Ummer Khan. Plaintiff also produce the general power of attorney executed by him infavour of his wife Revathi Depthi Mendonsa.



21. On the other hand defendant has produced the RTC of suit schedule property and order of District Registrar, Chikmagalur dated 17/06/2016. On perusal of the said order it reveals that plaintiff has entered into an agreement dated 30/11/2015 with one S.M. Umesh Gowda for sell the suit schedule property for a consideration of Rs.7,00,000/- in the agreement the possession of the suit schedule property has been delivered to the intending purchaser Sri. S.M. Umesh Gowda. Defendant also produced the notice issued by the District Registrar and copy of the sale agreement dated 30/11/2015 entered into between the plaintiff and S.M. Umesh Gowda. The para No.7 of the sale agreement shows that the possession of the property has been handed over to the purchaser Sri. S.M. Umesh Gowda. The document relied by defendants is the xerox copy. Defendants have not produced any authentic document of the said sale agreement and order of District Registrar, Chikmagalur. The plaintiff in the notes of



argument clearly denied the alleged sale agreement. Whether the documents relied by the defendants are genuine or not cannot be decided at this stage. Since it is xerox copy court cannot rely on the said document.

22. In the present application the plaintiff has sought relief for restraining defendant from the selling the timber which is laying in the plaint schedule property and from cutting or felling the tree from the suit schedule property. The certified copy of the sale deed produced by the plaintiff shows that he has purchased the suit schedule property from one Ummer Khan. The RTC produced by the plaintiff also discloses that plaintiff is in possession of the suit schedule property.

23. While deciding the application under Order 39 rule 1 & 2 of CPC, the court must be satisfied about prima-facie case to grant temporary injunction. It is settled principle of law that even if an unfettered prima-facie case is



found established by the applicant still the applicant has to establish balance of convenience and irreparable loss or injury, only on completion of 3 formalities the applicant will be granted the relief of temporary injunction.

24. The documents produced by the plaintiff shows that plaintiff is in possession of the suit schedule property. At this stage this court makes it very clear that this court is looking towards prima-facie case. It is well settled principles of law that at the time of disposing the temporary injunction application, the court cannot go into the prima-facie title and only to consider whether the applicant has made out a prima-facie case for granting interim relief.

25. The primary purpose or granting interim relief is the preservation of the things is dispute till legal rights and conflicting claims of the parties before the court are adjudicated. In other words, the object of making an order regarding interim relief is to evolve a workable formula to



the extent called for by the demands of the situation, keeping in mind the pros and cons of the matter and striking a delicate balance between two conflicting interests i.e., injury and prejudice, likely to be cause to the applicant if the relief is refused; and injury and prejudice likely to be caused to the respondent if the relief is granted. The underlying object of granting temporary injunction is to maintain and preserve status quo at the time of institution of the proceedings and to prevent any change in it until the final determination of the suit. It is in the nature of protective relief granted in favour of a party to prevent future possible injury.

26. The power to grant a temporary injunction is at the discretion of the court. This discretion, however, should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side. The first rule is that the applicant must make out a



prima facie case in support of the right claimed by him. The court must be satisfied that there is a bonafide dispute raised by the applicant, that there is a strong case for trial which needs investigation and a decision on merits and on the facts before the court there is a probability of the applicant being entitled to the relief claimed by him. The existence of a prima-facie right and infraction of such right is a condition precedent for grant of Temporary Injunction.

27. In order to ascertain the prima-facie case, this court has carefully perused the materials on record. The plaintiff has produced the certified copy of the sale deed and revenue documents of the plaint schedule properties. It appears that the RTC of suit schedule property standing in the name of plaintiff. In the present application the plaintiff prays to grant temporary injunction restraining the defendants or any other person claiming under them from selling the timber which is laying in the plaint schedule



property and from cutting and felling and transporting the timber from the suit schedule property. Plaintiff has filed the suit for declaration and possession. If the prayer sought in the IA No. I is granted in favour of plaintiff, no hardship will be cause to defendants. The apprehension of the plaintiff is that defendants are going to sell the timber and cutting the trees standing in the plaint schedule property. If defendants sell the timber laying in the schedule property and cut and fell the standing trees in the suit schedule property, in case the suit is decreed in favour of the plaintiff then the plaintiff will be put in to great loss and hardship.

28. The second condition for granting interim injunction is that the balance of convenience must be in favour of the applicant. In other words, the court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the



applicant by refusing the injunction will be grater than that which is likely to be caused to the opposite party by granting it. The existence of the prima-facie case alone does not entitle the applicant for a temporary injunction. The applicant must further satisfy the court about the third condition by showing that he will suffer irreparable injury if the injunction as prayed is not granted and that there is no other remedy open to him by which can protect himself from the consequences of apprehended injury.

29. After considering the materials on record, this court is of the opinion that comparative mischief, hardship or inconvenience will be caused to the plaintiff if equitable relief of temporary injunction is not granted in favour of the plaintiff than the comparative mischief, hardship or inconvenience caused to the defendants if this application is allowed. After considering the materials on record, this court is of the opinion that the applicant has made out



prima-facie case, the balance convenience is in favour of the plaintiff and if the equitable relief of temporary injunction is not granted in favour of plaintiff as prayed in I.A. No. I, then he will be put to irreparable loss and injury. At this stage while deciding I.A No.I this court cannot decide merits of the case. Based on the documents produced by the applicant it is clear that the applicant has made out a prima-facie case. Under such circumstances, if the application is not allowed the applicant will be put to great loss and hardship.

30. In view of my above discussion, I am of the opinion that the applicant has established prima-facie case in his favour. It is the applicant who will be put to inconvenience if defendant is not restrained from encroaching the suit schedule property. If the relief in IA. No.I is not granted then the applicant who will be put to irreparable loss and injury, if the defendants sell the timber laying on the plaint schedule property or if



defendants cut and felled the standing trees existing in the plaint schedule property. Accordingly, Point No.1 to 3 is answered in Affirmative.

31. Point No.4:- For the aforesaid reason and discussion, I proceed pass the following: -

O R D E R

I.A. No. I filed by the plaintiff Under Order 39 Rule 1 & 2 is hereby allowed.

The defendants or their men, agent or any other persons claiming through them are restrained from selling the timber which are laying in the schedule property or from cutting and felling the standing timber in the plaint schedule property pending disposal of the suit.

(Dictated to the stenographer, transcribed by her, corrected and then pronounced in the open court on this the 10th day of October 2023.)



B

**(JAYAPRAKASH V.)
SENIOR CIVIL JUDGE & JMFC,
MUDIGERE.**