

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

: PRESENT :

KUM.M.S.SHASHIKALA.,B.A.L.LL.B.,
SENIOR CIVIL JUDGE & JMFC,
MUDIGERE.

O.S.No.43/2019

DATED THIS THE 2nd DAY OF MARCH 2021

PLAINTIFF : K.P.Purushothama Prabhu
S/o Late K.P.Narasimha Prabhu,
Aged about 62 years, Agriculturist,
R/o Kalasa Post and Hobli, Mudigere
Taluk.

[By Sri G.B.Venkatesh, Advocate]

V/s.

DEFENDANT: Deju Poojari S/o Late Rukku
Poojari, Aged about 76 yers,
R/o Kalasa Post and Hobli,
Mudigere Taluk.

[By Sri K.S.Adithya, Advocate]

PARTIES IN I.A.No.3

Applicant: K.P.Purushothama Prabhu -Plaintiff

V/s

OPPONENT: Deju Poojari -Defendant

: ORDERS ON I.A.No.3:

I.A.No.3 an application U/o. XXXIX rule I and II of C.P.C., filed by plaintiff to direct the Tahsildar, Mudigere not to transfer the khatha as per the

partition deed took place between the defendant and his children. The said application is supported by an affidavit sworn by the plaintiff.

2. It is submitted by the plaintiff that he is filed suit for declaration of title and possession of suit schedule property. It is submitted that the plaintiff filed the suit against the defendant alleging that the defendant illegally got changed khatha of suit schedule property in his name. Hence he filed suit for possession. In this suit, the defendant appeared through his counsel. The defendant even knowing the pendency of the suit and during pendency of suit got partitioned suit schedule property between himself and his children through registered partition deed dated 04.09.2020. The plaintiff also filed application before the Tahsildar not to change the khatha. But the defendant is financially well and he had political influence. Hence, it is just and necessary to direct the Tahsildar not to transfer the khatha till passing judgment. Hence prays to grant TI as prayed.

3. On the other hand the defendant filed objection and submitted that the application is not maintainable either in law or on facts. The suit is for the relief of declaration of title as the plaintiff himself is not certain about his title. The defendant has got the khatha and

RTC for the *plaint schedule property* since he has every right to give partition in the same to his children. The devision of land among the family members will not be considered as transfer under law. The khatha of the land has to be changed as per the registered deeds and Tahsildar has no discretion power to reject the khatha change in case of registered document. The change of khatha will come under the exclusive jurisdiction of revenue courts and hence civil court cannot grant injunction to present the change of khatha. The application is filed to harass the defendant. Hence, prays to dismiss the I.A.No.3.

4. Heard arguments by Sri G.B.V., Adv., for plaintiff and Sri K.S.A., Adv., for defendant. Perused the materials on records.

5. On the basis of the above pleadings the following points arise for my consideration.

POINTS

- 1. Whether the plaintiff has made out a prima facie case to grant temporary injunction ?**
- 2. Whether plaintiff has made out balance of convenience, lies in his favour?**
- 3. Whether the plaintiff has made out a ground, if temporary injunction is not**

granted in his favour, he will be put into great hardship and irreparable loss?

4. What order?

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

Point No.1	:	In Negative
Point No.2	:	In Negative
Point No.3	:	In Negative
Point No.4	:	As per final order for the following:-

:R E A S O N S:

POINTS NO.1 to 3:

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

8. The plaintiff filed this suit for declaration of title and for possession of suit schedule property. On perusal of record, it is to be noted that the plaintiff alleged that the defendant illegally got transferred khatha in his name. The suit schedule property originally belongs to the plaintiff. Hence, the plaintiff constrained to file suit for declaration and title and possession.

9. During pendency of the suit it is true that the defendant and his children got partitioned the suit schedule property as per the registered partition deed dated 04.09.2020. Now this application is filed by the plaintiff to direct the Tahsildar not to transfer the khatha as per the registered partition deed dated 04.09.2020.

10. It is the main contention of the plaintiff is that the defendant by making partition in suit schedule property trying to defeat the rights of the plaintiff. Further it is argued by the plaintiff, if the defendant alienate the suit schedule property by changing the khatha it will cause great hardship for the plaintiff, to implead all the parties and also to pay the court fee.

11. It is to be noted that as per the law, it is the duty of the Tahsildar to change the khatha as per the registered deeds. Further it is to be noted that whether the khatha should be changed or not is the power vested with the Tahsildar. Hence this court cannot interfered with such power of the Tahsildar and this court also cannot direct the Tahsildar not to change the khatha.

12. Further it is to be noted that the grounds made out by the plaintiff is not a ground to direct the Tahsildar not to change the khatha. Further it is to be

noted that in this suit Tahsildar is also not party to the suit. Hence, I come to the conclusion that plaintiff has not made out a prima facie case and balance of convenience in his favour and TI cannot be granted as prayed by the plaintiff. Hence, I answer Point No.1 to 3 in “**Negative**”.

POINT NO. 4:

13. In view of my findings on the above point, I proceed to pass the following:

: O R D E R :

**I.A.No.3 an application U/o 39 rule
1 and 2 R/w. Sec.151 of C.P.C., filed by
plaintiff is hereby dismissed.**

Parties to bear their own costs..

(Dictated to the stenographer, transcribed by her, the transcript corrected by me and pronounced in open court on this the 2nd day of March, 2021)

Sd/-

**(M.S.SHASHIKALA)
SENIOR CIVIL JUDGE & JMFC.,
MUDIGERE.**